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1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
3 BEFORE THE HONORABLE JOHN E. MUNTER, JUDGE
4 DEPARTMENT NO. 505

5
6 LESLIE J. WHITELEY AND)
7 LEONARD WHITELEY,)
8 PLAINTIFFS,)
9 VS.) NO. 303184
10 RAYBESTOS-MANHATTAN, INC., ET)
11 AL.,)
12 DEFENDANTS.)
13 _____)
14

15 REPORTER'S TRANSCRIPT OF PROCEEDINGS
16 WEDNESDAY, JANUARY 19, 2000
17 (VOLUME 6, PAGES 731-867)
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23 REPORTED BY: JUDITH ANN OSSA, CSR 2310
24 OFFICIAL REPORTER
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2 APPEARANCES:

3
4 FOR THE PLAINTIFFS:

5 WARTNICK, CHABER, HAROWITZ & TIGERMAN
6 BY: MADELYN J. CHABER, ESQ.
7 ROBERT BROWN, ESQ.
8 MARTHA A.H. BERMAN, ESQ.
9 101 CALIFORNIA STREET, SUITE 2200
10 SAN FRANCISCO, CALIFORNIA 94111-5802

11
12 FOR THE DEFENDANT PHILIP MORRIS INCORPORATED:

13 SHOOK, HARDY & BACON LLP
14 BY: DAVID K. HARDY, ESQ.
15 GERALD V. BARRON, ESQ.
16 LUCY E. MASON, ESQ.
17 ONE MARKET, STEUART TOWER, NINTH FLOOR
18 SAN FRANCISCO, CALIFORNIA 94105-1310.

19 FOR THE DEFENDANT R.J. REYNOLDS TOBACCO COMPANY:

20 WOMBLE, CARLYLE, SANDRIDGE & RICE
21 BY: JEFFREY L. FURR, ESQ.
22 200 WEST SECOND STREET
23 WINSTON-SALEM, NORTH CAROLINA 27101

24 HOWARD, RICE, NEMEROVSKI, CANADY,
25 FALK & RABKIN
26 BY: H. JOSEPH ESCHER III
27 THREE EMBARCADERO CENTER, 7TH FLOOR
28 SAN FRANCISCO, CALIFORNIA 94111-4065

FOR DEFENDANT METALCLAD INSULATION CORPORATION:

MISCIAGNA & COLOMBATTO
BY: GREGORY S. ROSSE, ESQ.
27 MAIDEN LANE, 4TH FLOOR
SAN FRANCISCO, CALIFORNIA 94108

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WEDNESDAY, JANUARY 19, 2000 9:35 A.M.
(THE FOLLOWING PROCEEDINGS WERE HELD IN THE
COURTROOM, OUTSIDE THE PRESENCE OF THE JURY)
THE COURT: WE ARE ON THE RECORD OUTSIDE THE
PRESENCE OF THE JURY.
THE RECORD SHOULD REFLECT THAT COURT AND COUNSEL
MET IN AN OFF-THE-RECORD SESSION FOR APPROXIMATELY AN HOUR
AND A HALF I THINK LAST NIGHT.
AND THE RESULT OF IT, I THINK, WAS SOME
STIPULATIONS AND PERHAPS SOME RULINGS ON EVIDENTIARY MATTERS
THAT THE PARTIES WANT TO PUT ON THE RECORD.
SO WHY DON'T YOU PROCEED, COUNSEL, AND LET'S PUT
ON THE RECORD ANYTHING YOU WANT TO.

14 MR. ESCHER: GOOD MORNING, YOUR HONOR. JOE
15 ESCHER.
16 ONE OF YOUR HONOR'S RULINGS YESTERDAY DEALT WITH
17 PLAINTIFFS' EXHIBIT 388, WHICH IS A MEMO DATED SEPTEMBER 9,
18 1980.
19 YOUR HONOR, MY UNDERSTANDING IS THAT YOUR HONOR
20 RULED THAT THE SECOND PAGE OF THAT DOCUMENT WOULD NOT BE
21 ADMISSIBLE IN EVIDENCE BECAUSE OF ISSUES RELATING TO THE
22 MULTIPLE LEVELS OF HEARSAY, AND ALSO THE ISSUE OF UNFAIR
23 PREJUDICE UNDER EVIDENCE CODE SECTION 352.
24 MY UNDERSTANDING IS THAT THE PLAINTIFF HAD
25 RESERVED THE RIGHT TO ARGUE THAT THE FIRST PAGE OF THAT
26 DOCUMENT SHOULD BE ADMITTED INTO EVIDENCE.
27 AND WE WOULD CONTEST THAT, YOUR HONOR, ON THE
28 BASIS THAT IT HAS THE SAME PROBLEM OF MULTIPLE LEVELS OF
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1 HEARSAY, AND IN ADDITION TO THAT IS IRRELEVANT.
2 IT BASICALLY RELATES ONLY TO THE ISSUE OF WHETHER
3 THERE IS A FAILURE TO WARN IN THE CASE AFTER MID-1969, WHICH
4 YOUR HONOR HAS RULED OUT OF THE CASE, AND ALSO UNDER SECTION
5 352.
6 WE THINK, FOR ALL THOSE REASONS, THIS ENTIRE
7 DOCUMENT SHOULD BE EXCLUDED.
8 MR. BROWN: MAY I BE HEARD JUST FOR A SECOND ON
9 THAT, NOT TO ARGUE BUT TO MAKE A COMMENT?
10 THE COURT: SURE.
11 MR. BROWN: WE DISAGREE WITH WHAT HE JUST SAID
12 ON PAGE 1 AND ALSO ON PAGE 2.
13 BEFORE I KNEW WE WERE GOING TO PUT SOMETHING ON
14 THE RECORD THIS MORNING, I WAS GOING TO ADVISE THE COURT,
15 I'M GOING TO PREPARE AND FILE A MOTION TO ADMIT THAT. I'LL
16 ARGUE ALL OF THOSE THINGS AT THAT TIME AND PRESENT THAT IN
17 THE NEXT COUPLE OF DAYS.
18 THE COURT: ALL RIGHT. THEN WHY DON'T WE JUST
19 RESERVE RULING UNTIL YOU FILE WHAT YOU WANT TO FILE AND IF
20 THEY WANT TO RESPOND. JUST DON'T REFERENCE THE DOCUMENT
21 UNTIL I RULE.
22 MS. CHABER: ACTUALLY, I'D JUST LIKE TO ADDRESS
23 A PORTION OF THE DOCUMENT THAT I DON'T THINK SUFFERS FROM
24 ANY OF THE --
25 THE COURT: LET ME JUST SAY THIS. MY
26 UNDERSTANDING OF WHAT WE'RE DOING RIGHT NOW IS TO HAVE A
27 MEETING FOR FIVE OR 10 MINUTES SO WE COULD BE FAITHFUL TO
28 THE STARTING TIME OF THE JURY, THAT I WASN'T GOING TO BE
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1 RULING ON MY MATTERS THAT WEREN'T PRESENTED TO ME YESTERDAY.
2 MS. CHABER: THIS WAS PRESENTED.
3 THE COURT: NO, IT WASN'T. WE TALKED ABOUT PAGE
4 2, NOT PAGE 1. WE LEFT IT AT THE END OF THE DAY THAT YOU
5 WERE GOING TO TAKE A LOOK AT PAGE 1 AND SEE IF YOU WANTED IT
6 IN EVIDENCE OR NOT.
7 I DIDN'T STUDY PAGE 1. THE RULING THAT I MADE
8 YESTERDAY WAS ONLY ON PAGE 2.
9 BUT SINCE YOU ARE GOING TO WRITE A MEMO ON IT,
10 WHY DON'T WE MOVE ON RIGHT NOW, SO I CAN SEE THE WHOLE MEMO
11 AND VIEW THE WHOLE DOCUMENT IN THE CONTEXT OF YOUR MEMO.
12 MS. CHABER: COULD I JUST POINT OUT PARAGRAPHS
13 SO THAT WHEN THE COURT HAS AN OPPORTUNITY, THE COURT COULD
14 READ THEM. IT'S PARAGRAPH 5 THAT SAYS --
15 THE COURT: HOW DOES THE PARAGRAPH START?
16 MS. CHABER: "OTHER HINTS."
17 THE COURT: OKAY.
18 MS. CHABER: AND THE PARAGRAPH ABOVE TALKS ABOUT

19 POLLIN AS THE CURRENT HEAD OF THE NATIONAL INSTITUTE ON DRUG
20 ABUSE.

21 AND IT SAYS:

22 "WE QUOTE POLLIN SAYING THAT: 'CIGARETTE SMOKE
23 IS THE NATION'S LEADING DRUG PROBLEM AMONG YOUTH
24 DESPITE THE RISE IN MARIJUANA USE.'"

25 I THINK THAT'S RELEVANT TO THIS CASE. AND I
26 THINK THE NEXT PARAGRAPH IS AS WELL.

27 "IN NL-188, WE QUOTED POLLIN'S PREDECESSOR, DR.
28 ROBERT DU PONT: 'CIGARETTE SMOKING IS MORE

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1 ADDICTIVE THAN USING HEROIN, HOOKING TWO-THIRDS
2 OF THE PEOPLE WHO HAVE SMOKED.'"

3 THE COURT: WHAT DOES NL-188 MEAN? OR NL-233?

4 MR. ESCHER: I'M NOT CERTAIN, YOUR HONOR, BUT IT
5 MAY WELL BE A NEWSLETTER.

6 MS. CHABER: IT SAYS A MONOGRAPH ABOVE. TWO
7 PARAGRAPHS ABOVE, IT SAYS "REPORTED IN THE NL -- A MONOGRAPH
8 ON CIGARETTE SMOKING AS A DEPENDENT PROCESS."

9 THE COURT: WHY DON'T I KEEP IN MIND YOUR
10 CLAIMED RELEVANCE.

11 WHY DON'T YOU, IF YOU WISH, PREPARE THE MEMO THAT
12 YOU ARE TALKING ABOUT. AND LET ME GIVE BOTH SIDES A CHANCE
13 TO WRITE A LITTLE MEMO ON THIS DOCUMENT.

14 THE RULING THAT I MADE YESTERDAY, WHICH WILL NOW
15 BE A TENTATIVE, SINCE YOU'RE GOING TO BRIEF THIS ISSUE, WAS
16 THAT PAGE 2, I WOULD EXCLUDE.

17 THERE IS A REFERENCE THERE, OR THE SUBSTANCE OF
18 PAGE 2 IS:

19 "SHOOK, HARDY REMINDS US, I'M TOLD, THAT THE
20 ENTIRE MATTER OF ADDICTION IS THE MOST POTENT
21 WEAPON A PROSECUTING ATTORNEY CAN HAVE IN A LUNG
22 CANCER/CIGARETTE CASE," WHICH IS THE GUTS OF PAGE
23 2, ALTHOUGH THERE'S A COUPLE OF OTHER SENTENCES ON IT.

24 THAT SENTENCE I WAS TENTATIVELY GOING TO EXCLUDE
25 AND STILL AM TENTATIVELY GOING TO EXCLUDE IT ON THE GROUNDS
26 OF HEARSAY. IT'S A MULTIPLE LEVEL OF HEARSAY ISSUE BECAUSE
27 THE REFERENCE IS TO "I'M TOLD"; THE "I'M TOLD" MODIFIES THE
28 WHOLE SENTENCE.

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1 MS. CHABER HAD ARGUED YESTERDAY OFF THE RECORD,
2 OR MR. BROWN HAD, THAT THE REFERENCE TO THE WORD "REMINDS"
3 OUGHT TO TAKE IT OUT OF THAT LEVEL OF HEARSAY.

4 AND MY VIEW OF THAT IS THAT IT DOESN'T. IF YOU
5 READ THE DOCUMENT LITERALLY, AND IF IT IS SUSCEPTIBLE OF THE
6 INTERPRETATION PLAINTIFFS' COUNSEL WANTS TO GIVE IT, THEN I
7 WOULD EXCLUDE IT UNDER 352, BECAUSE THE PROBATIVE VALUE IS
8 OUTWEIGHED BY THE PROBABILITY OF UNDUE PREJUDICE, SINCE THE
9 JURY IS LIKELY TO CONSIDER IT PRIMARILY FOR THE
10 IMPERMISSIBLE HEARSAY PURPOSE, WHICH IS REALLY THE ESSENCE
11 OF THE STATEMENT.

12 SO WE ARE GOING TO LEAVE THIS DOCUMENT SUCH THAT
13 THE PLAINTIFF NEEDS TO CLEAR IT WITH ME BEFORE OFFERING IT
14 INTO EVIDENCE WITH THE JURY OR REFERENCING IT IN FRONT OF
15 THE JURY, WITH THE UNDERSTANDING THAT PLAINTIFFS DESIRE TO
16 WRITE A LITTLE BRIEF ON THIS SUBJECT.

17 MR. ESCHER: YOUR HONOR, THERE ARE TWO OTHER
18 ITEMS I'D LIKE TO PUT ON THE RECORD THAT WE DISCUSSED
19 YESTERDAY.

20 THE FIRST ONE, THE COURT SUSTAINED THE REYNOLDS
21 OBJECTION TO EXHIBIT 109, WHICH WAS THE DOCUMENT WAS SENT TO
22 ONLY ONE INDIVIDUAL.

23 THERE WAS A DISTINCTION BETWEEN COMMUNICATIONS

24 DIRECTED TO THE PLAINTIFF AND HOW THAT MIGHT HAVE AFFECTED
25 INDIRECTLY LESLIE WHITELEY IN COMMUNICATIONS DIRECTED TO ONE
26 OTHER PERSON WHO HAD NO COMMUNICATIONS WITH LESLIE WHITELEY,
27 AND THAT WAS EXHIBIT 1109.
28 THE OTHER --

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1 THE COURT: THAT'S CORRECT. MY RULING IS TO
2 EXCLUDE THAT ON 352 GROUNDS, BECAUSE THE PROBATIVE VALUE IS
3 OUTWEIGHED BY THE UNDUE PREJUDICE, BECAUSE THAT WAS
4 COMMUNICATED, FROM ALL APPEARANCES, TO ONLY ONE INDIVIDUAL
5 AND IS NOT SUSCEPTIBLE OF THE ARGUMENT THAT IT SERVED IN ANY
6 WAY, SHAPE OR FORM TO SHAPE THE VIEWS OR VALUES OF THE
7 COMMUNITY.

8 MR. ESCHER: TWO OTHER POINTS, YOUR HONOR. WE
9 HAD A DISCUSSION OFF THE RECORD ABOUT HOW TO DEAL WITH THE
10 PRIVILEGE DOCUMENT ISSUE AND THIS BUSINESS OF WHETHER WE
11 COULD SUBMIT MATERIALS UNDER SEAL RELATING TO DOCUMENTS
12 WHICH HAD ALREADY BEEN PUBLICLY DISSEMINATED THROUGH THE
13 INTERNET.

14 THESE ARE PRIMARILY THE DOCUMENTS. WE ARE STILL,
15 OF COURSE, ASSERTING PRIVILEGE AS TO THOSE DOCUMENTS, BUT WE
16 THOUGHT IT MADE SENSE FOR YOUR HONOR TO BE ABLE TO SEE THE
17 DOCUMENTS, SINCE THEY'RE ALREADY ON THE INTERNET, WITHOUT
18 THAT CONSTITUTING ANY KIND OF WAIVER OF THE APPLICABLE
19 PREFERENCES OR THE WORK PRODUCT DOCTRINE.

20 I BELIEVE YOUR HONOR AGREED THAT WE'LL PREPARE A
21 PROPOSED ORDER IN CONNECTION WITH THAT WHEN WE DO BRIEF THE
22 PRIVILEGE ISSUE.

23 THE COURT: FOR THE RECORD, MR. BROWN, MS.
24 CHABER AGREED THAT YOU WOULD STIPULATE THAT I SHOULD ENTER
25 SUCH AN ORDER.

26 IN OTHER WORDS, PLAINTIFFS' POSITION IS THAT THE
27 PRIVILEGE OR WORK PRODUCT WAS WAIVED OR DOESN'T EXIST.

28 MR. BROWN: RIGHT.

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1 THE COURT: BUT THE POINT IS THAT THE
2 STIPULATION IS THAT, BY REASON OF DISCLOSING TO ME THE
3 CONTENT OF THESE DOCUMENTS, THAT WON'T CHANGE THE STATUS QUO
4 WITH RESPECT TO THE MATTER OF PRIVILEGE OR WORK PRODUCT.

5 MR. BROWN: WE AGREED.

6 THE COURT: SO THAT IS THE ORDER OF THE COURT.

7 MR. ESCHER: THERE IS ONE OTHER ITEM, YOUR
8 HONOR. I DON'T KNOW WHETHER WE NEED TO DO THIS ON THE
9 RECORD OR NOT. IT'S A SOMEWHAT SENSITIVE ISSUE, AND I
10 WOULDN'T MIND HAVING MS. CHABER HERE FOR IT.

11 THE COURT: LET'S GO ON TO A COUPLE OF MATTERS
12 WE CAN DO WITHOUT HER BEING HERE.

13 MR. ESCHER: OKAY.

14 THE COURT: YOU WERE, I THINK, CONSIDERING A
15 STIPULATION BETWEEN THE PARTIES ON HOW I SHOULD HANDLE THE
16 ADMISSION OF DOCUMENTS THAT I'M ALLOWING IN, IF I DO, ON THE
17 ALLEGED CONSPIRACY THEORY.

18 AND I THINK THE IDEA WAS THAT IF AND TO THE
19 EXTENT THAT I ALLOW THOSE DOCUMENTS -- AND I AM GOING TO
20 REQUIRE A PREDICATE SHOWING BEFORE LETTING THEM IN OF THE
21 EXISTENCE OF AN ALLEGED CONSPIRACY, BUT THAT SHOULD BE
22 HANDLED BY MY OVERRULING AN OBJECTION -- NOT THAT THE
23 DEFENSE IS STIPULATING THAT I SHOULD OVERRULE ONE OF THEIR
24 OBJECTIONS -- BUT TO THE EXTENT I DO, THAT I SHOULD THEN SAY
25 TO THE JURY, "THE OBJECTION IS OVERRULED. THIS DOCUMENT IS
26 RECEIVED SUBJECT TO THE INSTRUCTIONS WHICH I'LL GIVE YOU AT
27 THE END OF THE CASE THAT WILL APPLY TO THIS AND OTHER
28 SIMILAR DOCUMENTS," OR SOME REFERENCE LIKE THAT.

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1 THAT IS A GENTLE REFERENCE TO THE INSTRUCTIONS
2 THAT I'LL GIVE TO THE JURY AT THE END OF THE CASE ABOUT HOW
3 TO TREAT THE ADMISSIBILITY OF DOCUMENTS THAT ARE OFFERED ON
4 THE ALLEGED CONSPIRACY THEORY, BECAUSE THE JURY SHOULD
5 CONSIDER THOSE DOCUMENTS IF, BUT ONLY IF IT FINDS, FOR
6 EXAMPLE, THAT THERE WAS A CONSPIRACY AND THAT THE DOCUMENTS
7 WERE PREPARED IN FURTHERANCE OF THAT ALLEGED CONSPIRACY.

8 SO LET ME ASK YOU: DO WE HAVE A STIPULATION THAT
9 THAT IS THE WAY THAT I SHOULD HANDLE THOSE RULINGS, TO THE
10 EXTENT THAT I DO OVERRULE THE DEFENSE'S OBJECTIONS?

11 MR. BROWN: WE WOULD AGREE TO THAT, YOUR HONOR.

12 MS. MASON: YES, YOUR HONOR.

13 MR. ESCHER: YES, YOUR HONOR.

14 THE COURT: AND THEN, MR. ROSSE, ARE YOU HERE?

15 MR. ROSSE: YES.

16 THE COURT: I DON'T KNOW WHETHER YOU HAVE ANY
17 INTEREST IN THAT, BUT YOU HAVE NO OBJECTION TO IT, I TAKE
18 IT?

19 MR. ROSSE: I DON'T KNOW THAT I HAVE STANDING TO
20 OBJECT OR ENTER INTO STIPULATIONS ON SOMEONE ELSE'S
21 DOCUMENTS.

22 IF NEED BE, I WILL STIPULATE TO IT.

23 THE COURT: IN ANY EVENT, YOU DON'T OBJECT TO
24 IT?

25 MR. ROSSE: NO.

26 THE COURT: SO THEN, I'LL HANDLE THEM THAT WAY.

27 YOU MAY WANT TO CONSIDER HOW YOU WERE GOING TO
28 PHRASE IN FRONT OF THE JURY THOSE KIND OF OBJECTIONS.

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1 ARE YOU GOING TO CALL THEM HEARSAY OR HOW ARE YOU
2 GOING TO -- AND THE OTHER STIPULATION WAS THAT YOU WOULD
3 PRESERVE A MOTION TO STRIKE THEM IN THEIR ENTIRETY AT SOME
4 LATER TIME OF THE CASE, AND THAT THAT RIGHT WOULD BE
5 PRESERVED WITHOUT THE NEED OF YOUR RECITING IT DURING THE
6 COURSE OF TRIAL IN FRONT OF THE JURY.

7 THAT'S ALSO SO STIPULATED?

8 MR. BROWN: WE AGREE TO THAT.

9 THE COURT: SO DOES THE DEFENSE; RIGHT?

10 MS. MASON: YES, YOUR HONOR.

11 MR. ESCHER: YES, YOUR HONOR.

12 MR. ROSSE: YES, YOUR HONOR.

13 THE COURT: YOU CAN PHRASE THE OBJECTIONS THE
14 WAY THAT YOU WANT.

15 MR. BROWN: YOUR HONOR, I DON'T KNOW HOW YOU
16 WANT --

17 THE COURT: TATSUO, I NEED YOU FOR ONE SECOND
18 FOR THE NEXT THING WE'RE DOING.

19 MR. BROWN: I DON'T KNOW HOW YOU PROCEDURALLY
20 WANT TO HANDLE THIS, BUT WE WOULD WANT TO MOVE INTO EVIDENCE
21 THE FRANK STATEMENT AND ALL OF THE DOCUMENTS THAT ARE THE
22 PUBLIC STATEMENTS OF TI THAT THEY'RE NOT OBJECTING TO.

23 THE COURT: IF YOU HAVE A SERIES OF DOCUMENTS
24 THAT THEY'RE NOT OBJECTING TO, THEN YOU SHOULD STAND UP IN
25 FRONT OF THE JURY AND SAY THAT "THERE'S A SERIES OF
26 DOCUMENTS THAT I'M GOING TO OFFER INTO EVIDENCE AND I HAVE
27 TALKED TO COUNSEL, AND I UNDERSTAND THERE IS NO OBJECTION TO
28 IT," AND THEN READ INTO THE RECORD THE NUMBERS THAT YOU ARE

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1 OFFERING INTO EVIDENCE.

2 THEN I'LL ASK THE DEFENSE IF THERE IS ANY
3 OBJECTION. IF THEY SAY NO, I'LL SAY, "ALL OF THOSE ARE
4 ADMITTED."

5 (COUNSEL CONFER OFF THE RECORD)
6 THE COURT: DO WE HAVE TO DO THIS ON THE
7 RECORD?
8 MS. MASON: JUST THIS ONE CLARIFICATION.
9 THE COURT: ARE WE ON THE RECORD?
10 MS. MASON: JUST FOR THIS SENTENCE FOR PUBLIC
11 STATEMENTS. IT'S NOT CORRECT THAT WE DON'T HAVE AN
12 OBJECTION. IT'S CORRECT THAT THE OBJECTION WE WOULD ASSERT
13 YOU WOULD OVERRULE.
14 THE COURT: THEN YOU NEED TO FIGURE OUT HOW YOU
15 WANT TO HANDLE THAT PROCEDURALLY. IT REALLY IS OF NO
16 CONSEQUENCE TO THE COURT. HOWEVER YOU WANT TO MAKE A RECORD
17 IS FINE WITH ME.
18 MS. MASON: THANK YOU.
19 THE COURT: THE RECORD SHOULD ALSO REFLECT --
20 YOU TOLD ME, MR. BROWN, THAT WE NOW HAVE A COURT EXHIBIT,
21 BUT WE OUGHT TO PUT A REFERENCE ON THE RECORD.
22 WE ARE ABOUT TO HAVE ONE OF THE COLLOQUY ON THE
23 VIDEOTAPES THAT WERE PLAYED YESTERDAY TO THE JURY DURING MS.
24 CHABER'S OPENING STATEMENT ABOUT THE ADS THAT APPEARED OR
25 THE PROGRAMS THAT APPEARED REFERENCING CIGARETTES.
26 MR. BROWN: THAT'S CORRECT, YOUR HONOR. WE HAVE
27 GIVEN COPIES TO THE DEFENDANTS.
28 THE DOCUMENT IS ENTITLED "TRANSCRIPTION OF
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1 TELEVISED -- OR TELEVISION COMMERCIAL SCRIPTS PRESENTED IN
2 OPENING STATEMENT," AND ALL OF THE VERBAL ON THOSE TAPES ARE
3 THERE.
4 AND I'D ASK IT TO BE MARKED AS COURT EXHIBIT 1.
5 THE COURT: OKAY
6 (DOCUMENT MORE PARTICULARLY
7 LISTED IN THE INDEX MARKED
8 FOR IDENTIFICATION COURT
9 EXHIBIT # 1)
10 MR. HARDY: WOULD IT BE ALL RIGHT TO HAVE A
11 RECORD MADE AS TO WHAT THE DATE OF THE AIRING OF THOSE
12 EXHIBITS THAT WERE RUN?
13 I THINK PLAINTIFFS' COUNSEL HAS A LIST, AS I
14 RECALL, THAT SHOWS THE DATE THAT EACH OF THOSE ADS WERE RUN
15 ON TELEVISION, AND I'D LIKE THE RECORD TO REFLECT THE YEAR.
16 MR. BROWN: WE MAY. WE PROBABLY DO. I DON'T
17 KNOW WHAT IT IS, AND WE CAN TALK ABOUT IT. WE'LL SEE IF WE
18 CAN AGREE ON THE DATES. WE MAY NOT AGREE ON ALL THE DATES.
19 MR. HARDY: THEN, AT A MINIMUM, I'D LIKE TO KNOW
20 WHAT DATE IT IS THE PLAINTIFF ASSERTS THOSE EXHIBITS WERE
21 SHOWN, THE ADS.
22 MR. BROWN: LET ME GET THAT TOGETHER AND I'LL
23 TALK TO COUNSEL ABOUT IT.
24 THE COURT: THAT'S FINE. I WOULD ASSUME THAT IF
25 THAT WAS PLAYED TO THE JURY IN THE OPENING STATEMENT, THAT
26 SOMEBODY PLANS ON OFFERING THOSE THINGS INTO EVIDENCE DURING
27 THE COURSE OF THE TRIAL, AT WHICH TIME IT WILL BE NECESSARY
28 AT LEAST BY THEN TO IDENTIFY A DATE.
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1 BUT I'D APPRECIATE IT IF COUNSEL WOULD GET
2 TOGETHER AND SEE IF YOU CAN WORK IT OUT.
3 MR. BROWN: WE CAN WORK IT OUT.
4 MR. ESCHER: YOUR HONOR, JUST FOR THE RECORD, I
5 HAVE NOT RECEIVED A COPY OF THIS TRANSCRIPT, NOR HAVE I HAD
6 AN OPPORTUNITY TO REVIEW IT FOR ACCURACY.
7 AS SOON AS I RECEIVE IT AND GET A CHANCE TO
8 REVIEW, IF I HAVE A PROBLEM WITH IT, I WILL OF COURSE
9 INDICATE THAT TO PLAINTIFFS' COUNSEL, BUT I HAVE NOT SEEN IT

10 OR REVIEWED IT.
11 MR. BROWN: DAVID HARDY HAD TWO. HE'S PLEADING
12 GUILTY TO NOT GIVING YOU A COPY.
13 MR. HARDY: LET THE RECORD SHOW THAT PLAINTIFFS'
14 COUNSEL GAVE ME TWO COPIES. I HAVE JUST NOW PASSED ONE TO
15 MR. ESCHER.
16 THE COPIES WE RECEIVED DO CONTAIN A MISSTATEMENT
17 ON PAGE 2, CHARACTERIZING THE LUCILLE BALL AIRING AS OLD
18 GOLD CIGARETTES. IT WAS ACTUALLY PHILIP MORRIS.
19 APART FROM THAT, I SEE NO PROBLEM.
20 THE COURT: WHY DON'T YOU CHANGE THAT ON COURT
21 EXHIBIT 1.
22 CAN WE DO THIS? CAN WE PUT ON THE RECORD A
23 STIPULATION NOW THAT THAT IS AN ACCURATE TRANSCRIPT, WITH
24 THE RIGHT OF THE DEFENSE TO UNDO THAT STIPULATION BY GOING
25 ON THE RECORD AT ANY TIME IN THE NEAR FUTURE?
26 THAT WILL GIVE YOU A CHANCE TO REVIEW IT, BUT WE
27 CAN GET THE STIPULATION ON THE RECORD AND WE'LL GET THIS OUT
28 OF THE WAY UNTIL YOU DETERMINE YOU HAVE A PROBLEM WITH IT.

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1 CAN WE DO THAT?
2 MR. HARDY: DEFENDANTS WILL REVIEW THE
3 COMMERCIALS WHICH WERE SHOWN BY THE PLAINTIFF IN OPENING
4 STATEMENT, AND IF WE BELIEVE THERE IS AN INACCURACY IN THE
5 REPORTED TRANSCRIPTION, WE WILL ADVISE THE COURT.
6 THE COURT: WHY DON'T WE DO THAT, AND GIVE YOU A
7 WEEK'S TIME IN WHICH TO DO THAT.
8 CAN WE HAVE THE STIPULATION, THEN, IT WILL BE
9 DEEMED THAT COURT EXHIBIT 1 IS AN ACCURATE TRANSCRIPT,
10 UNLESS SOMEBODY GOES ON THE RECORD WITHIN THE NEXT WEEK AND
11 STATES OTHERWISE?
12 MR. BROWN: WE'LL AGREE TO THAT.
13 MR. ESCHER: YES, YOUR HONOR.
14 MR. HARDY: YES, YOUR HONOR.
15 THE COURT: OKAY. THEN, LET'S DO THAT.
16 IS THERE ANYTHING ELSE ANYBODY WANTS TO PUT ON
17 THE RECORD?

18 MR. BROWN: THERE WERE A COUPLE OF THINGS, BUT I
19 CAN DO IT QUICKER. I CAN DO IT FAST NOW, BECAUSE I'M GOING
20 TO SAY THAT WITH RESPECT TO THREE OBJECTIONS WE HAVE TO THE
21 OPENING STATEMENT. AND ONE IS REFERENCE TO THE
22 CONGRESSIONAL HEARINGS, WHICH WE BELIEVE NOW OPENS THE DOOR
23 TO OUR PUTTING IN EVIDENCE OF WHAT HAPPENED AT THOSE
24 CONGRESSIONAL HEARINGS AND THE CONTEXT OF THEM.

25 WE'RE ALSO GOING TO OBJECT TO ASSERTIONS MADE --
26 I THINK PRIMARILY MADE BY DAVID HARDY THAT, AS A FACTUAL
27 MATTER TO JURY, THEY WOULD HEAR NO EVIDENCE THAT THE
28 WARNINGS WERE INADEQUATE, WHICH WE THINK IS IMPROPER,

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1 BECAUSE THAT'S THE RULINGS OF THE COURT THAT THE CLAIM IS
2 PREEMPTED.

3 AND THIRD, VARIOUS REFERENCES THAT -- I THINK IT
4 WAS DAVID HARDY AND PERHAPS ALSO JEFF FURR MADE TO THE
5 EFFECT THAT PLAINTIFF HAS A RIGHT TO CHOOSE. SHE HAS A
6 RIGHT TO DO ALL KINDS OF THINGS THAT WE THINK ADD UP TO
7 COMPARATIVE NEGLIGENCE, AND PROVIDE US WITH AN OPPORTUNITY
8 NOW TO DEAL WITH THAT PROBLEM BY HAVING PLAINTIFF TESTIFY
9 THAT TO SOME EXTENT SHE REALIZES SHE MADE THE WRONG CHOICE.

10 NOW, I'M GOING TO PUT THAT IN WRITING AND I'M
11 GOING TO DO IT ONCE I HAVE THE REFERENCE TO THE ACTUAL
12 TRANSCRIPTS, SO THAT I CAN PRECISELY POINT OUT WHAT
13 STATEMENTS THAT WE ARE DEALING WITH.

14 MR. HARDY: LET ME JUST RESPOND VERY BRIEFLY, IF

15 I MIGHT, YOUR HONOR.
16 AS I SAID YESTERDAY, I DO THINK IT'S APPROPRIATE
17 TO WAIT UNTIL WE HAVE THE DAILY TRANSCRIPT ON THIS TOPIC
18 FROM THE REPORTER, SO WE DON'T HAVE TO DISAGREE ABOUT WHAT I
19 SAID IN OPENING STATEMENT.

20 BUT I BELIEVE IT'S CRYSTAL CLEAR THAT PRIOR TO MY
21 OPENING STATEMENT, WE DISCUSSED OFF THE RECORD WITH THE
22 COURT WHAT I COULD AND COULD NOT SAY ABOUT THE WARNINGS.

23 AND IN FACT, WE REMOVED THE REFERENCE FROM MY
24 FIRST EXHIBIT TO ADEQUACY OF THE WARNINGS.

25 AND I MADE NO STATEMENT ABOUT ADEQUACY OR
26 INADEQUACY OF THE WARNINGS. I USED THE LANGUAGE SUGGESTED
27 TO ME BY THE COURT, THAT THERE WOULD BE NO EVIDENCE OR
28 SUGGESTION THAT THE WARNING LABEL SHOULD HAVE SAID SOMETHING

0748

1 MORE OR SOMETHING DIFFERENT.

2 I DID NOT AT ANY TIME CALL THEM ADEQUATE OR MAKE
3 THE STATEMENT THAT THE PLAINTIFF WAS NOT MAKING A CLAIM THAT
4 THEY WERE INADEQUATE.

5 THE COURT: I THINK --

6 MR. BROWN: I WILL ADDRESS THAT IN MY MOTION.

7 THE COURT: LET ME JUST TELL YOU MY REACTION TO
8 YOUR OBJECTIONS.

9 THE OBJECTION THAT YOU MADE JUST NOW ON THE
10 RECORD CONCERNING MR. HARDY'S REFERENCE TO MATTERS OCCURRING
11 IN CONGRESS WAS AN OBJECTION THAT YOU VOICED OFF THE RECORD
12 BEFORE MR. HARDY'S OPENING STATEMENT. AND THE COURT SAID
13 THAT I WOULDN'T PRECLUDE MR. HARDY FROM DOING THAT IN HIS
14 OPENING STATEMENT, AND WHETHER OR NOT WHAT HE WAS GOING TO
15 SAY WAS GOING TO OPEN ANY DOORS, WE WOULD JUST HAVE TO WAIT
16 AND SEE, AND THAT HE WENT AHEAD AND DID WHAT HE DID WITH
17 THAT KNOWLEDGE.

18 THE OTHER OBJECTIONS THAT YOU HAVE MADE, I'M NOT
19 CONFIDENT THAT I HEARD BEFORE RIGHT NOW AS TO HIS OPENING
20 STATEMENTS.

21 AND I THINK THAT IN ORDER TO PRESERVE WHATEVER
22 RECORD ANY OBJECTION YOU WANT TO MAKE, YOU ARE GOING TO NEED
23 TO MAKE YOUR OBJECTIONS IN A TIMELY WAY, AND THAT IS AT A
24 TIME WHEN THE COURT CAN DO SOMETHING ABOUT THEM.

25 I CAN'T DO ANYTHING ABOUT THINGS THAT I HEAR FOR
26 THE FIRST TIME ON THE DAY FOLLOWING THE EVENT THAT OCCURRED
27 IN COURT. BUT TO THE EXTENT THAT WE HAVE OFF-THE-RECORD
28 DISCUSSIONS THAT EVERYBODY AGREES WE ARE GOING TO PUT ON THE

0749

1 RECORD LATER, YOU WOULD OBVIOUSLY, IN MY VIEW, AT LEAST, BE
2 PRESERVING THOSE OBJECTIONS. AND THAT WOULD APPLY TO THE
3 OBJECTION THAT YOU JUST VOICED CONCERNING THE REFERENCES TO
4 WHAT OCCURRED IN CONGRESS.

5 I JUST DO NOT RECALL THE OTHER OBJECTIONS THAT
6 YOU JUST MADE NOW HAVING BEEN MADE BEFORE RIGHT NOW.

7 MR. BROWN: YOUR HONOR, YESTERDAY WAS A LONG
8 DAY, AND I MAY BE WRONG, BUT I THINK I DID OBJECT TO THOSE.

9 THE COURT: MAYBE YOU DID.

10 MR. BROWN: IN ADDITION TO OUR OBJECTIONS HAVING
11 BEEN MADE, WE ARE GOING TO SUGGEST IN MY WRITTEN MOTION THAT
12 WE GET AN INSTRUCTION THAT CURES THE PROBLEM.

13 THE COURT: OKAY. IN ANY EVENT, I'M NOT RULING
14 RIGHT NOW THAT YOU DIDN'T RAISE THOSE MATTERS YESTERDAY.
15 AND I THINK THAT WHAT IS IMPORTANT FOR US TO DO AS WE GO
16 THROUGH THIS CASE, WE ARE GOING TO HAVE TO HAVE SOME
17 CONVERSATIONS, PROBABLY OFF THE RECORD, THAT WE ARE GOING TO
18 NEED TO LATER PUT ON THE RECORD.

19 I THINK WE ALL NEED TO BE CAREFUL ABOUT WHAT IT

20 IS THAT'S SAID IN OFF-THE-RECORD DISCUSSIONS, SO THOSE
21 POINTS CAN BE PRESERVED LATER ON THE RECORD.
22 BUT I THINK THAT WE ARE ABLE TO WORK OUR WAY
23 THROUGH THOSE KINDS OF PROBLEMS.
24 MR. BROWN: I'D ALSO LIKE TO SAY FOR THE RECORD,
25 THE PLAINTIFF AGREES WITH THE COURT'S CHARACTERIZATION OF
26 WHAT HAPPENED WITH RESPECT TO THE OFF-THE-RECORD STATEMENTS
27 ON CONGRESS.
28 YOU DID CONSIDER WHETHER IT WAS OBJECTIONABLE.
0750
1 YOU SAID, "ALL RIGHT. WE'LL GO AHEAD," WORDS TO THAT
2 EFFECT. IN EFFECT, YOU SAID, "YOU TAKE YOUR CHANCES."
3 THE COURT: I THINK THAT'S A FAIR
4 CHARACTERIZATION.
5 WHAT I SAID IS THAT I WOULD REEVALUATE THE
6 PLAINTIFFS' DESIRE TO OFFER EVIDENCE IN LIGHT OF THE OPENING
7 STATEMENT THAT WAS MADE, BUT THAT WAS AN ISSUE THAT RAISED
8 THE NOERR-PENNINGTON ISSUE AND THE ISSUE OF CIVIL CODE
9 SECTION --
10 MR. BROWN: 47(C).
11 MR. FURR: 47(C)?
12 THE COURT: 47(C). WHATEVER IT WAS.
13 I RULED ON THOSE MATTERS IN A VERY PRELIMINARY
14 WAY DURING THE IN LIMINES, SAYING THAT THE PLAINTIFFS'
15 COUNSEL NEEDED TO CLEAR IT WITH THE COURT OUTSIDE THE
16 PRESENCE OF THE JURY.
17 THAT STATEMENT REMAINS THE RULING. WE'LL HAVE TO
18 TAKE A LOOK AT WHAT IT IS, IF ANYTHING, THAT THE PLAINTIFF
19 WISHES TO DO IN THIS RESPECT.
20 AND NOW, WE'LL DO IT AGAINST THE BACKGROUND OF
21 WHATEVER MR. HARDY SAID AND WHATEVER THE RECORD AS A WHOLE
22 IS AT THE TIME THAT THE PLAINTIFF SEEKS TO DO THAT.
23 MR. BROWN: EVERYBODY WANTS TO DO THAT. MAYBE
24 WE COULD DO YOUR SENSITIVE MOTION LATER.
25 THE COURT: LET ME SUGGEST TO YOU, IT'S 10:00
26 O'CLOCK. NOW I WOULD LIKE TO GET THE JURY IN HERE, SO WE
27 COULD GET IN THE PATTERN AND PRACTICE WITH THE JURY STARTING
28 ON TIME. I'D LIKE TO ADJOURN THIS SESSION RIGHT NOW AND LET
0751
1 THE JURY COME IN.
2 HERE IS A NOTE FROM A JUROR. WHY DON'T YOU COME
3 ON IN.
4 (THE FOLLOWING PROCEEDINGS WERE HELD IN
5 CHAMBERS, OUTSIDE THE PRESENCE OF THE JURY,
6 AT 10:05 A.M.)
7 THE COURT: WE'RE IN CHAMBERS OUTSIDE OF THE
8 PRESENCE OF THE JURY FOR PURPOSES OF RECORDING A NOTE THAT
9 THE COURT RECEIVED THIS MORNING FROM JUROR NO. 5,
10 MS. ANDERSON, WHO SAYS:
11 "LAST EVENING, 1-18-00, WHILE FIXING DINNER AND
12 LISTENING TO THE TELEVISION, I INADVERTENTLY
13 HEARD SOME NEWS ON '60 MINUTES' CONCERNING THE
14 TWO TOBACCO COMPANIES IN OUR CASE. I ONLY HEARD
15 THE INTRODUCTION AND IMMEDIATELY TURNED THE
16 TELEVISION OFF. I THOUGHT YOU SHOULD KNOW, AS I
17 MIGHT NOT BE THE ONLY ONE. THANKS."
18 AND I TAKE IT FROM MY DISCUSSION WITH COUNSEL OFF
19 THE RECORD THAT YOU ALL AGREE THAT I SHOULD REFERENCE THIS
20 NOTE IN A GENERAL WAY, AND TELL THE JURY THAT "OUR JUROR DID
21 THE RIGHT THING. YOU ALL NEED TO DO EXACTLY THE SAME THING
22 WHEN YOU WOULD BE CONFRONTED WITH A SIMILAR SITUATION."
23 AND THIS WAY. THIS JUROR GETS A LITTLE CREDIT
24 FOR DOING THE RIGHT THING AND WE GET THE MESSAGE OUT AGAIN

25 OF THE IMPORTANCE OF AVOIDING ANY KIND OF INFORMATION ABOUT
26 THE CASE OUTSIDE OF THE COURTROOM.

27 SO DO I HAVE EVERYONE'S STIPULATION THAT THAT IS
28 THE RIGHT THING TO DO?

0752

1 MR. BROWN: YES, YOUR HONOR.

2 MR. HARDY: YES.

3 MR. BARRON: YES, YOUR HONOR.

4 MR. FURR: YES, YOUR HONOR.

5 MR. ROSSE: YES.

6 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE
7 COURTROOM, IN THE PRESENCE OF THE JURY,
8 AT 10:10 A.M.)

9 THE COURT: GOOD MORNING, EVERYBODY.

10 JUST BEFORE WE START WITH OUR FIRST WITNESS, LET
11 ME JUST SAY I RECEIVED A NOTE FROM ONE OF YOU, WHICH IS A
12 VERY APPROPRIATE NOTE. AND LET ME JUST TAKE ADVANTAGE OF
13 THIS NOTE TO REMIND YOU ALL OF SOMETHING THAT I TOLD YOU
14 DURING THE JURY SELECTION PROCESS.

15 THIS PARTICULAR JUROR WAS WATCHING TV LAST NIGHT
16 AND SOMETHING CAME ON THE TV RELATED TO THE SUBJECT MATTER
17 OF TOBACCO. AND THIS JUROR IMMEDIATELY TURNED IT OFF AND
18 DIDN'T LISTEN TO WHAT IT WAS.

19 AND I JUST WANT TO REMIND YOU THAT THAT IS WHAT
20 YOU MUST DO. IT IS ABSOLUTELY CRITICAL THAT YOU DO NOT
21 LISTEN TO ANY MEDIA STORIES OR ANY OTHER INFORMATION OUTSIDE
22 OF THIS COURTROOM RELATING TO THE SUBJECT MATTER OF THIS
23 LAWSUIT.

24 AS I INDICATED TO YOU IN THE JURY SELECTION
25 PROCESS, YOU HAVE TO GET ALL OF YOUR INFORMATION ABOUT THIS
26 CASE FROM THE ADMISSIBLE EVIDENCE PRESENTED HERE IN COURT,
27 AND YOU CANNOT DO ANY HOMEWORK. YOU CAN'T TRY TO INFORM
28 YOURSELF ON YOUR OWN IN ANY WAY, SHAPE OR FORM OR EVEN

0753

1 LISTEN TO ANYTHING OUTSIDE OF THE COURTROOM HAVING DO WITH
2 THE SUBJECT MATTER OR SUBJECT MATTERS OF THIS LAWSUIT.

3 SO THAT WAS THE RIGHT THING TO DO. THANK YOU
4 VERY MUCH FOR BRINGING IT TO MY ATTENTION, AND THANK YOU FOR
5 GIVING ME THE OPPORTUNITY TO REPEAT SOMETHING THAT IS
6 ABSOLUTELY CRITICAL TO YOUR SYSTEM OF JUSTICE AND TO
7 EVERYBODY GETTING A FAIR TRIAL.

8 I THINK WE ARE READY NOW TO HAVE OUR FIRST
9 WITNESS.

10 SO MR. BROWN OR MS. CHABER, WHO WILL OUR FIRST
11 WITNESS BE?

12 MS. CHABER: DR. RONALD DAVIS.

13 THE COURT: OKAY.

14 THE CLERK: PLEASE COME FORWARD. PLEASE STAND
15 RIGHT HERE AND RAISE YOUR RIGHT HAND.

16 TESTIMONY OF

17 RONALD M. DAVIS, M.D.

18 A WITNESS CALLED ON BEHALF OF THE PLAINTIFFS, HAVING BEEN
19 DULY SWORN, TESTIFIED AS FOLLOWS:

20 THE CLERK: PLEASE STATE YOUR NAME.

21 THE WITNESS: RONALD DAVIS.

22 THE CLERK: PLEASE SPELL YOUR NAME.

23 THE WITNESS: R-O-N-A-L-D D-A-V-I-S.

24 THE CLERK: THANK YOU. PLEASE TAKE THE STAND

25

26 DIRECT EXAMINATION

27 BY MS. CHABER: Q. GOOD MORNING, DR. DAVIS.

28 A. GOOD MORNING.

0754

1 Q. COULD YOU TELL THE JURY WHAT TYPE OF A DOCTOR YOU
2 ARE.

3 A. YES. I'M A MEDICAL DOCTOR, AND MY SPECIALTY IS
4 PREVENTIVE MEDICINE.

5 Q. TELL US WHAT PREVENTIVE MEDICINE IS.

6 A. IT'S A BOARD-CERTIFIED SPECIALTY, MUCH LIKE 23 OR
7 24 OTHERS BOARD CERTIFIED SPECIALTIES, RADIOLOGY, SURGERY,
8 INTERNAL MEDICINE AND SO ON.

9 THE SPECIALTY OF PREVENTIVE MEDICINE AIMS TO KEEP
10 PEOPLE HEALTHY, TO PREVENT DISEASE, TO PREVENT PREMATURE
11 DEATH.

12 SOMETIMES I JOKE THAT WE TRY AND PUT ALL THE
13 OTHER DOCTORS OUT OF BUSINESS.

14 Q. YOU MENTIONED SOME WORDS. YOU'RE OUR FIRST
15 WITNESS AND OUR FIRST MEDICAL WITNESS AS WELL. YOU WILL GET
16 THE HONOR OF HAVING TO EXPLAIN LOTS OF THINGS THAT HOPEFULLY
17 AS WE GO THROUGH THE TRIAL WE DON'T HAVE TO KEEP EXPLAINING.

18 WHEN YOU SAY IT'S A "BOARD-CERTIFIED SPECIALTY,"
19 WHAT DOES THAT MEAN?

20 A. THAT MEANS THAT I'VE PASSED AN EXAMINATION CALLED
21 A BOARD EXAMINATION. AND SPECIALISTS IN MEDICINE HAVE TO
22 PASS A BOARD CERTIFICATION IN ORDER TO DOCUMENT THAT THEY
23 HAVE ACHIEVED A CERTAIN LEVEL OF TRAINING.

24 AND IT MEANS THAT THEY HAVE DONE TRAINING IN
25 THEIR SPECIALTY AFTER MEDICAL SCHOOL FOR A CERTAIN NUMBER OF
26 YEARS, AND THEN THEY HAVE TAKEN THE EXAMINATION, WHICH MIGHT
27 BE GIVEN OVER A ONE OR TWO-DAY PERIOD AND THEY'VE PASSED
28 THAT EXAMINATION.

0755
1 Q. AND DO YOU HAVE BOARD CERTIFICATION IN ANY OTHER
2 FIELDS BESIDES PREVENTIVE MEDICINE?

3 A. NO. PREVENTIVE MEDICINE IS MY BOARD
4 CERTIFICATION. THAT'S MY SPECIALTY.

5 Q. AND IS THAT CONSIDERED WITHIN INTERNAL MEDICINE
6 OR IS IT A REAL SPECIALTY, WHERE YOU GET REFERRED PEOPLE AS
7 OPPOSED TO SEEING THEM PRIMARILY?

8 A. YES. IT CERTAINLY IS A LEGITIMATE SPECIALTY OF
9 MEDICINE. I WENT TO MEDICAL SCHOOL, I HAVE MY M.D., MY
10 MEDICAL DOCTOR. AND I DID MY YEARS OF TRAINING IN
11 PREVENTIVE MEDICINE, WHICH I EXPECT YOU WILL ASK ME ABOUT IN
12 A FEW MOMENTS.

13 THIS IS, AS I MENTIONED, ONE OF 23 OR 24
14 BOARD-CERTIFIED SPECIALTIES, JUST LIKE SURGERY, RADIOLOGY,
15 ANESTHESIOLOGY, PATHOLOGY.

16 PREVENTIVE MEDICINE IS ONE OF THOSE. IT IS NOT
17 AS WELL KNOWN AS THE OTHERS AND WE'RE NOT AS LARGE AS THE
18 OTHERS. WE ONLY HAVE A FEW THOUSAND PEOPLE IN THE UNITED
19 STATES WHO PRACTICE PREVENTIVE MEDICINE, BUT IT IS ONE OF
20 THOSE SPECIALTIES THAT I MENTIONED.

21 Q. AND COULD YOU GIVE US AN IDEA OF THE BACKGROUND,
22 TRAINING AND EDUCATION THAT YOU HAD TO HAVE IN ORDER TO GET
23 TO -- I'M GOING TO STEP BACK A SECOND ACTUALLY TO -- I WAS
24 GOING TO SAY TO GET TO WHERE YOU ARE.

25 WHERE ARE YOU? BESIDES SITTING IN THIS
26 COURTROOM, WHEN YOU'RE NOT HERE, WHERE ARE YOU PRACTICING?

27 A. I'M WITH THE HENRY FORD HEALTH SYSTEM IN DETROIT
28 IN SOUTHEASTERN MICHIGAN. AND IT IS A LARGE MANAGED CARE

0756
1 ORGANIZATION, WHICH INCLUDES ABOUT 11 HOSPITALS, A LARGE HMO
2 WITH A HALF A MILLION MEMBERS, A LARGE GROUP PRACTICE, A
3 MEDICAL GROUP WITH ABOUT 650 PHYSICIANS WHO ARE SALARIED.

4 AND AS PART OF OUR SYSTEM, 30 OR SO CLINICS AND
5 OTHER BITS AND PIECES OF HEALTH CARE DELIVERY, HOSPICE CARE,

6 HOME HEALTH, THAT KIND OF THINGS.
7 Q. AND WHAT IS YOUR ROLE?
8 A. MY ROLE IS TO RUN A PROGRAM IN HEALTH PROMOTION
9 AND DISEASE PREVENTION. WE WORK WITH OUR DOCTORS, OUR
10 NURSES, OUR HMO, OUR HOSPITALS OR CLINICS, TRYING TO HELP
11 THEM DELIVER MORE PREVENTION, DOING BETTER IN PAP SMEARS,
12 MAMMOGRAMS, HELPING THE PATIENTS QUIT SMOKING, AVOIDING
13 ALCOHOL ABUSE, HAVING THEIR PATIENTS HAVE BETTER DIETARY
14 HABITS, WEARING SEAT BELTS, BICYCLE HELMETS, EXERCISE. ALL
15 THOSE KINDS OF THINGS.
16 Q. ALL RIGHT. NOW, LET'S FIND OUT HOW YOU GOT TO
17 WHERE YOU ARE.
18 FIRST, EDUCATIONALLY, WHAT DO YOU HAVE TO DO --
19 WHERE DID YOU START OUT TO GET TO BE A SPECIALIST IN
20 PREVENTIVE MEDICINE?
21 A. FIRST, ONE HAS TO GO TO MEDICAL SCHOOL AND
22 COMPLETE MEDICAL SCHOOL. AND --
23 Q. I ASSUME YOU HAD TO GO TO COLLEGE FIRST?
24 A. TRUE. HIGH SCHOOL BEFORE THAT.
25 Q. DID YOU HAVE A MAJOR IN COLLEGE?
26 A. YES.
27 Q. AND WHAT WAS THAT?
28 A. ZOOLOGY, WHICH IS THE STUDY OF ANIMALS. IT'S
0757
1 PART OF BIOLOGY.
2 Q. OKAY.
3 A. I DIDN'T STUDY PLANTS TOO, WHICH IS BOTANY. BUT
4 ZOOLOGY IS THE STUDY OF ANIMALS.
5 Q. DID YOU KNOW YOU WANTED TO GO INTO MEDICINE AT
6 THAT POINT IN TIME?
7 A. YES.
8 Q. AND WHAT LED YOU TO WANT TO BE A DOCTOR?
9 A. WELL, MY MOTHER ENCOURAGED ME FROM THE TIME I WAS
10 A CHILD TO FIND A PROFESSION WHERE I WOULD WORK FOR MYSELF.
11 AND SHE SUGGESTED EITHER MEDICINE OR LAW, BECAUSE THEN I
12 COULD WORK FOR MYSELF, BE MY OWN BOSS.
13 SO I DID FULFILL HER WISH BY BECOMING A DOCTOR.
14 BUT MY FIRST EMPLOYER WAS THE FEDERAL GOVERNMENT. MY SECOND
15 EMPLOYER WAS THE STATE HEALTH DEPARTMENT IN MICHIGAN.
16 AND NOW I'M WORKING FOR THE HENRY FORD HEALTH
17 SYSTEM WITH ABOUT 16,000 EMPLOYEES. SO I'M MOVING IN THE
18 RIGHT DIRECTION TOWARDS WORKING FOR MYSELF, BUT IT'S GOING
19 TO TAKE SOME MORE TIME BEFORE I GET THERE.
20 Q. YOU HAVEN'T GOTTEN THERE YET.
21 A. BUT THAT IS WHY I DECIDED. THAT WAS ONE OF THE
22 INFLUENCES TOWARD MY BECOMING A DOCTOR, I THINK, THE
23 ENCOURAGEMENT BY MY MOTHER.
24 BUT THAT ASIDE, I WANTED TO FIND A PROFESSION
25 WHERE I COULD MAKE A DIFFERENCE IN PEOPLE'S LIVES AND TO
26 HELP PEOPLE HAVE A HEALTHIER AND BETTER QUALITY OF LIFE.
27 Q. AND SO YOU WENT TO MEDICAL SCHOOL.
28 WHERE DID YOU GO?
0758
1 A. I WENT TO THE UNIVERSITY OF CHICAGO PRITZKER
2 SCHOOL OF MEDICINE, WHICH IS ON THE SOUTH SIDE OF CHICAGO.
3 Q. AND HOW LONG A PROGRAM IS THIS AND WHAT KIND OF
4 THINGS DOES IT ENTAIL?
5 A. MEDICAL SCHOOL AT THE UNIVERSITY OF CHICAGO IS
6 LIKE MEDICAL SCHOOL IN MOST PLACES IN THE UNITED STATES. IT
7 INVOLVES FOUR YEARS OF TRAINING.
8 THE FIRST TWO ARE TYPICALLY CLASSWORK, LEARNING
9 ANATOMY, PHYSIOLOGY, BIOCHEMISTRY, PHARMACOLOGY. SOME OF
10 THOSE ARE LONG WORDS, BUT PHARMACOLOGY, FOR EXAMPLE, IS HOW

11 MEDICATIONS AFFECT THE BODY, WHICH DISEASES ARE BEST TREATED
12 BY WHICH MEDICATIONS.

13 PATHOLOGY IS THE STUDY OF TISSUES. ANATOMY IS, I
14 THINK, WELL-KNOWN TO PEOPLE WITH WHAT THAT'S ALL ABOUT. SO
15 TAKING COURSE WORK FOR THE FIRST TWO YEARS.

16 AND THEN THE LAST TWO YEARS OF MEDICAL SCHOOL ARE
17 TYPICALLY CLINICAL WORK, WORKING IN THE HOSPITAL, WORKING
18 WITH PRACTICING DOCTORS, AND WORKING WITH OTHER DOCTORS IN
19 TRAINING WHO HAVE ALREADY COMPLETED MEDICAL SCHOOL, WHAT WE
20 CALL RESIDENTS OR HOUSE STAFF.

21 SO WORKING UNDER THEIR SUPERVISION AND UNDER THE
22 SUPERVISION OF PRACTICING PHYSICIANS, BUT TREATING PATIENTS,
23 BEING PART OF THE TEAM THAT TREATS PATIENTS, TO LEARN HOW TO
24 BECOME A DOCTOR, BEYOND JUST READING BOOKS AND GOING TO
25 CLASSES.

26 Q. AND THEN, FROM THAT POINT, WHAT DO YOU DO IN
27 ORDER TO COMPLETE YOUR MEDICAL TRAINING?

28 A. ONE IS GIVEN EXAMINATIONS DURING MEDICAL SCHOOL

0759

1 AND AFTER MEDICAL SCHOOL TO SHOW THAT THEY HAVE MASTERED THE
2 KNOWLEDGE TO BE A DOCTOR.

3 SO YOU HAVE TO GRADUATE FROM MEDICAL SCHOOL, BUT
4 YOU ALSO HAVE TO PASS AN EXAMINATION. THERE ARE TWO TYPES
5 OF EXAMINATIONS. FOR ME, IT WAS THE NATIONAL BOARD OF
6 MEDICAL EXAMINERS TEST, THE NBME. SO I HAD TO PASS THAT,
7 WHICH IS GIVEN IN THREE PARTS.

8 ONCE YOU PASS THAT AND GRADUATE FROM MEDICAL
9 SCHOOL, THEN YOU COULD BECOME LICENSED TO PRACTICE
10 MEDICINE. SO THAT HAPPENED FOR ME.

11 AND AT ABOUT THAT TIME, AFTER YOU GRADUATE
12 MEDICAL SCHOOL, PASSED YOUR EXAMS, BECOME LICENSED TO
13 PRACTICE MEDICINE, AT THAT TIME, YOU CAN START YOUR
14 POSTGRADUATE EDUCATION AND TRAINING, WHICH IS TO BECOME A
15 SPECIALIST, WHETHER IT'S A FAMILY DOCTOR OR A RADIOLOGIST, A
16 SURGEON OR PREVENTIVE MEDICINE PHYSICIAN.

17 SO AFTER PASSING THOSE EXAMS, GETTING LICENSED
18 AND GRADUATING FROM MEDICAL SCHOOL, THEN I ENTERED MY
19 PREVENTIVE MEDICINE TRAINING.

20 Q. AND HOW DID YOU PICK PREVENTIVE MEDICINE? WHAT
21 DREW YOU TO IT?

22 A. I WAS FRUSTRATED IN MEDICAL SCHOOL IN TREATING
23 PATIENTS, BEING PART OF THE TEAM THAT TREATED PATIENTS WHO
24 HAD DISEASES THAT COULD HAVE BEEN PREVENTED, PATIENTS WHO
25 HAD CANCER OR HEART DISEASE OR WHO HAD SUFFERED A STROKE OR
26 WHO HAD DIABETES FROM BEHAVIORS THAT, IF CHANGED, COULD HAVE
27 PREVENTED THEM FROM GETTING THE PARTICULAR DISEASE, OR IF
28 THEY HAD BEEN VACCINATED, IF THEY HAD GOTTEN MORE EXERCISE,

0760

1 IF THEY HAD NOT GAINED AS MUCH WEIGHT AS THEY DID, IF THEY
2 HAD LOST WEIGHT THROUGH EXERCISE OR THROUGH DIETARY HABITS,
3 THEY MIGHT NOT HAVE DEVELOPED BLOOD PRESSURE OR DIABETES.

4 I BECAME FRUSTRATED DEALING WITH THESE DISEASES,
5 SEEING THE IMPACT ON PEOPLE AND ON THEIR FAMILIES AND ON
6 THEIR LOVED ONES, SEEING ALL THAT AND KNOWING IT WAS
7 PREVENTABLE.

8 SO I DECIDED TO GO INTO ONE OF THE SPECIALTIES
9 THAT FOCUSES ON CHANGING PEOPLE'S BEHAVIOR, GETTING THEM
10 IMMUNIZED, GETTING THEIR CANCER TESTS DONE ON TIME, GETTING
11 THEIR CHECKUPS, PREVENTING THESE DISEASES IN THE FIRST
12 PLACE.

13 Q. AS YOU CONTINUE TO TALK, YOU CONTINUE TO TALK
14 FASTER, AND OUT OF THE CORNER OF MY EYE I'M SEEING THE COURT
15 REPORTER TRYING TO CATCH UP TO YOU. SO I MIGHT REMIND YOU A

16 COUPLE OF TIMES TO SLOW DOWN A LITTLE BIT.
17 WHAT DOES THE POSTGRADUATE WORK CONSIST OF IN
18 PREVENTIVE MEDICINE? WHAT WERE YOU DOING?
19 A. I HAD THREE YEARS OF TRAINING.
20 AND FIRST OF ALL, AFTER I FINISHED MEDICAL
21 SCHOOL, I DID MY INTERNSHIP IN INTERNAL MEDICINE. SO THAT
22 WAS ONE YEAR AFTER I GRADUATED MEDICAL SCHOOL BUT BEFORE I
23 TRAINED IN PREVENTIVE MEDICINE.
24 SO I DID ONE YEAR OF INTERNAL MEDICINE, WHICH IS
25 BASICALLY GENERAL MEDICINE FOR ADULTS. THAT'S WHAT INTERNAL
26 MEDICINE IS ALL ABOUT. SO I DID THAT FOR A YEAR IN CHICAGO
27 AT MICHAEL REESE HOSPITAL.
28 AND AT THAT POINT, THEN I TRAINED IN PREVENTIVE
0761
1 MEDICINE. TO GO THROUGH A PREVENTIVE MEDICINE RESIDENCY
2 PROGRAM AND GET BOARD-CERTIFIED, ONE HAS TO HAVE THAT
3 CLINICAL YEAR AFTER GRADUATING FROM MEDICAL SCHOOL.
4 SO I DID MY CLINICAL YEAR IN INTERNAL MEDICINE,
5 AND THEN I PURSUED MY PREVENTIVE MEDICINE TRAINING. AND I
6 DID THAT FOR THREE YEARS, TRAINED FOR THREE YEARS IN
7 PREVENTIVE MEDICINE AT THE U.S. CENTERS FOR DISEASE CONTROL
8 AND PREVENTION IN ATLANTA.
9 Q. WHY DON'T YOU EXPLAIN TO US WHAT THAT IS.
10 A. IT'S KNOWN BY MOST PEOPLE BY ITS ABBREVIATION,
11 WHICH IS THE CDC. IT USED TO BE CALLED THE CENTERS FOR
12 DISEASE CONTROL.
13 AND THEN THEY ADDED THE WORDS "AND PREVENTION" A
14 FEW YEARS AGO. IT USED TO BE CALLED BEFORE THAT THE
15 COMMUNICABLE DISEASE CENTER.
16 Q. SO THEY WERE ABLE TO KEEP THE INITIALS, BUT
17 CHANGED WHAT THE WORDS MEANT?
18 A. CORRECT. THEY CHANGED THE NAME A NUMBER OF TIMES
19 THROUGH THE YEARS. MY BARBER IN ATLANTA USED TO CALL IT THE
20 COOTIE FACTORY.
21 I TRAINED THERE. AND WHAT IT IS, IT'S THE
22 LEADING FEDERAL AGENCY IN PREVENTIVE MEDICINE.
23 SO WHAT I DO AS A PHYSICIAN IT DOES FOR THE
24 FEDERAL GOVERNMENT. IT TRIES TO PROMOTE ALL OF THESE THINGS
25 FOR THE WHOLE U.S. POPULATION.
26 TO EXPLAIN IT A BIT BETTER, THE EPA, THAT DEALS
27 WITH THE ENVIRONMENT, THE ENVIRONMENTAL PROTECTION AGENCY.
28 THE NIH, THAT DEALS WITH RESEARCH IN MEDICINE.
0762
1 THE CDC DEALS WITH CHANGES IN MEDICINE, HOW CAN
2 WE DO BETTER IN IMMUNIZING OUR CHILDREN, HAVING PEOPLE GET
3 THEIR FLU SHOTS, HOW CAN WE DO BETTER AT GETTING PEOPLE TO
4 GIVE UP SMOKING, KIDS NOT TO START, REDUCE DRUNK DRIVING OR
5 TO REDUCE INJURIES IN THE WORKPLACE.
6 ALL OF THOSE KINDS OF THINGS WHAT ARE THE CDC
7 FOCUSES ON. THEY'RE THE LEADING FEDERAL AGENCY FOR
8 PREVENTION.
9 Q. HOW BIG AN ORGANIZATION ARE WE TALKING ABOUT?
10 A. I THINK THEY HAVE 5,000 EMPLOYEES, A BUDGET OF, I
11 THINK, THREE BILLION SO, SOMETHING LIKE THAT.
12 HIV/AIDS, I FORGOT TO MENTION IS ONE OF THEIR
13 HUGE AREAS OF FOCUS. MAYBE A THIRD OF THEIR TOTAL BUDGET AT
14 THAT TIME IS SPENT ON THE AIDS PROBLEM.
15 THAT IS WHERE I DID MY THREE YEARS OF PREVENTIVE
16 MEDICINE TRAINING.
17 Q. AND CAN YOU GIVE US AN IDEA OF WHAT THOSE THREE
18 YEARS CONSISTED OF.
19 A. YES. WELL, WE BEGIN WITH A FULL MONTH OF INTENSE
20 ORIENTATION TO PUBLIC HEALTH AND PREVENTIVE MEDICINE.

21 THINGS LIKE BIOSTATISTICS AND EPIDEMIOLOGY.
22 AND I CAN DEFINE THOSE, IF YOU LIKE.
23 Q. WE ARE GOING TO HAVE TO.
24 A. BIOSTATISTICS, EPIDEMIOLOGY, ENVIRONMENTAL
25 MEDICINE, HEALTH SERVICES ADMINISTRATION, WHICH MEANS HOW DO
26 WE RUN MEDICAL ORGANIZATIONS, HOW CAN WE BETTER DO THAT. SO
27 WE TRAIN IN ALL OF THOSE THINGS.
28 THE WAY IN WHICH THE CDC PROGRAM WORKS IS TO
0763
1 ASSIGN THEIR TRAINEES TO WORK IN A PARTICULAR DEPARTMENT OR
2 AREA. AND AFTER THE ONE-MONTH INTENSE ORIENTATION, THE
3 PERSON WOULD BE ASSIGNED TO WORK IN A PARTICULAR AREA.
4 SO FOR MY FIRST TWO YEARS, I WORKED IN THE AREA
5 OF IMMUNIZATION, FOCUSING MOSTLY ON MEASLES, WORKING ON OUR
6 NATIONAL MEASLES ELIMINATION PROGRAM.
7 AND THEN FOR MY THIRD YEAR, I WORKED ON SMOKING
8 AND TOBACCO. AND THE TRAINING INVOLVES SEMINARS ON A
9 REGULAR BASIS, WEEKLY, MONTHLY, A VARIETY OF SEMINARS,
10 ACTUALLY DOING THE WORK, LEARNING ON THE JOB.
11 FOR EXAMPLE, FOR MEASLES, I WOULD COLLECT
12 STATISTICS ON ALL THE MEASLES CASES IN THE COUNTRY AND
13 FIGURE OUT WHY PEOPLE WERE GETTING MEASLES IN SOME PLACES
14 BUT NOT OTHERS, AND WHY WERE SOME PLACES EXPERIENCING AN
15 OUTBREAK OF MEASLES.
16 SO I COLLECTED THOSE STATISTICS, I ANALYZED THEM,
17 I SUBMITTED THEM AND PUBLISHED THEM IN PEER REVIEW JOURNALS.
18 Q. WE GOING TO HAVE TO EXPLAIN A LOT OF WORDS HERE,
19 BUT I'M KEEPING TRACK.
20 A. THEN, VERY IMPORTANTLY, PART OF OUR TRAINING
21 INVOLVES INVESTIGATING OUTBREAKS. AND SO FOR MEASLES, FOR
22 EXAMPLE, I WENT TO MONTANA FOR TWO WEEKS AS THE LEAD
23 INVESTIGATOR TO DETERMINE WHY MONTANA WAS HAVING A LARGE
24 MEASLES OUTBREAK, PRIMARILY ON AN INDIAN RESERVATION.
25 I WENT TO PUERTO RICO FOR A MONTH, INVESTIGATED
26 HUNDREDS AND HUNDREDS OF CASES OF MEASLES IN PUERTO RICO,
27 WHEREAS MOST OF THE REST OF COUNTRY WAS HAVING LITTLE, IF
28 ANY, MEASLES.
0764
1 Q. WHEN YOU SAY INVESTIGATED THESE THINGS, WHAT DID
2 THAT ENTAIL?
3 A. A LOT OF DIFFERENT THINGS. FINDING OUT WHO WAS
4 GETTING MEASLES. WE TALK ABOUT PERSON, PLACE AND TIME.
5 WHAT KIND OF PEOPLE WERE GETTING THE DISEASE? WHAT AGES?
6 WHAT RACES? WHAT ETHNICITIES?
7 PLACE MIGHT BE WHERE? WHEN WERE THEY GETTING
8 MEASLES? WHEN WERE ALL THESE CASES HAPPENING?
9 AND TIME WOULD BE OBVIOUSLY -- I'M SORRY -- PLACE
10 WOULD BE WHERE THEY WERE LIVING? WERE THERE POCKETS OF
11 INFECTION? WHETHER WE COULD IDENTIFY A REASON WHY PEOPLE IN
12 ONE NEIGHBORHOOD OR ONE COUNTY WERE GETTING MEASLES AND
13 PEOPLE IN ANOTHER COUNTY WERE NOT.
14 SO THAT WOULD BE ONE KIND OF THING THAT WE WOULD
15 DO.
16 Q. OKAY. YOU MENTIONED PEER REVIEW JOURNALS OR PEER
17 REVIEW LITERATURE.
18 WHAT IS THAT?
19 A. A PEER REVIEW JOURNAL IS A JOURNAL WHICH
20 PUBLISHES PAPERS ONLY AFTER THEY'VE BEEN REVIEWED BY EXPERTS
21 IN THE FIELD. AND TYPICALLY, A JOURNAL MOST PEOPLE HAVE
22 HEARD OF, THE NEW ENGLAND JOURNAL OF MEDICINE OR THE JOURNAL
23 OF THE AMERICAN MEDICAL ASSOCIATION.
24 TYPICALLY, THOSE JOURNALS WOULD RECEIVE A PAPER
25 FROM A SCIENTIST OR A DOCTOR WHO WOULD LIKE TO GET THAT

26 PAPER PUBLISHED. AND THE JOURNAL WOULD TYPICALLY REVIEW
27 THAT PAPER AMONG THE EDITORS OF THE JOURNAL, BUT THEY WOULD
28 ALSO TYPICALLY SEND IT OUT TO EXPERTS IN THAT FIELD.

0765

1 SO IF A JOURNAL GOT A PAPER ON ULCER DISEASE,
2 TREATING ULCERS WITH A PARTICULAR MEDICINE, THEY WOULD SEND
3 THAT PAPER OUT TO TWO OR THREE EXPERTS IN ULCER DISEASE, AND
4 THEY WOULD GET RECOMMENDATIONS BACK FROM THOSE EXPERTS ON
5 WHETHER THAT PAPER SHOULD BE ACCEPTED FOR PUBLICATION OR
6 REJECTED FOR PUBLICATION OR REVISED, IMPROVED SOMEHOW BEFORE
7 IT WOULD BE RECONSIDERED.

8 THAT PEER REVIEW PROCESS IS WHAT MAKES JOURNALS
9 AUTHORITATIVE. SO JOURNALS THAT DON'T GO THROUGH THAT PEER
10 REVIEW PROCESS AND JUST HAVE ONE PERSON DECIDE ALL BY
11 HIMSELF OR HERSELF WHETHER A PAPER IS PUBLISHED WOULD NOT BE
12 CONSIDERED AS AUTHORITATIVE AS ANOTHER JOURNAL THAT IS
13 PEER-REVIEWED.

14 Q. DOES THAT MEAN THAT ANY ARTICLE THAT'S PUBLISHED
15 IN A PEER REVIEW JOURNAL IS CORRECT IN ITS SCIENCE?

16 A. NO. THE PEER REVIEW PROCESS IS HELPFUL IN
17 IMPROVING PAPERS BEFORE THEY'RE PUBLISHED AND IN DECIDING
18 WHICH PAPERS SHOULD BE ACCEPTED AND SHOULD NOT BE ACCEPTED,
19 BUT IT'S NOT A PERFECT PROCESS. AND FLAWED PAPERS DO GET
20 INTO THE LITERATURE, THE SCIENTIFIC LITERATURE. THAT
21 HAPPENS.

22 BUT THE PEER REVIEW PROCESS DOES HELP ENSURE THAT
23 THE PAPERS THAT ARE PUBLISHED ARE OF HIGHER QUALITY.

24 BUT SOMETIMES A PAPER WILL BE PUBLISHED, AND
25 THERE WILL BE LETTERS TO THE EDITOR THAT ARE SENT IN AND
26 THEN PUBLISHED WHICH MIGHT POINT OUT PROBLEMS WITH THE
27 ARTICLE THAT WAS PUBLISHED.

28 SOMETIMES, TO SORT ALL OF THIS OUT, WE LOOK AT

0766

1 ALL OF THE EVIDENCE, AND IT'S VERY IMPORTANT -- WHEN WE LOOK
2 AT ANYTHING THAT MIGHT HAVE ARTICLES THAT POINT IN ONE
3 DIRECTION OR ANOTHER, IT'S IMPORTANT TO LOOK AT ALL OF THE
4 EVIDENCE AND WEIGH ALL OF IT TO COME TO A FINAL
5 DETERMINATION.

6 Q. AND YOU'VE SAID YOU'VE PUBLISHED PEER REVIEW
7 ARTICLES.

8 CAN YOU GIVE US AN IDEA OF HOW MANY?

9 A. I THINK IT'S 100 OR SO, MORE THAN 100 ARTICLES IN
10 PEER REVIEW JOURNALS THAT I'M AN AUTHOR OF.

11 Q. AND HOW MANY APPROXIMATELY RELATE TO ISSUES OF
12 SMOKING AND HEALTH?

13 A. THE VAST MAJORITY. PROBABLY FOUR-FIFTHS OF THEM.
14 I PUBLISHED A NUMBER OF ARTICLES IN PEER REVIEW
15 JOURNALS ON IMMUNIZATION, ON THE WORK THAT I DID THAT I
16 ALREADY DISCUSSED.

17 BUT BACK IN ABOUT 1987, WHEN I BEGAN TO WORK ON
18 TOBACCO FULL TIME WITH THE CDC, I BEGAN TO DO MUCH MORE
19 RESEARCH ON SMOKING AND TOBACCO ISSUES.

20 AND SINCE THEN, TOBACCO HAS BEEN THE MAIN AREA OF
21 RESEARCH THAT I'VE BEEN INVOLVED IN.

22 Q. AND NOW, LET'S TALK ABOUT YOU LEAVING MEASLES
23 BEHIND AND GOING ON TO SMOKING AND HEALTH PREVENTION.

24 WHAT WERE YOU DOING THERE, AND WHAT WAS THAT
25 PROCESS LIKE IN TERMS OF YOUR EDUCATION AND TRAINING?

26 A. I'VE FOCUSED ON TOBACCO ISSUES ACTUALLY EVER
27 SINCE I WAS A FIRST OR SECOND-YEAR MEDICAL STUDENT.

28 SO FOR ABOUT 20 YEARS, I HAVE BEEN FOCUSING ON

0767

1 SMOKING AND TOBACCO ISSUES, BECAUSE IT'S BEEN RECOGNIZED

2 OVER THAT PERIOD OF TIME AS THE MOST IMPORTANT PREVENTABLE
3 CAUSE OF DEATH IN OUR SOCIETY.

4 AND AS I MENTIONED, I WAS DECIDING IN MEDICAL
5 SCHOOL THAT I WANTED TO FOCUS ON PREVENTION. AND TO DO WELL
6 IN PREVENTION AND PREVENTING DISEASE, ONE HAS TO PAY
7 ATTENTION TO SMOKING AND TOBACCO. BECAUSE AS I MENTIONED,
8 IT'S THE MOST IMPORTANT PREVENTABLE CAUSE OF DEATH IN OUR
9 SOCIETY.

10 SO I HAVE BEEN WORKING ON THAT SINCE 1979. BUT
11 IN 1986, I MOVED OVER TO ANOTHER PART OF THE CDC FROM
12 IMMUNIZATION AND BEGAN TO WORK ON TOBACCO FULL TIME.

13 Q. AND WHERE DID YOU GO?

14 A. I WENT TO THE CENTER FOR HEALTH PROMOTION AND
15 EDUCATION, WHICH IS ANOTHER PART OF CDC. AND I WORKED FOR
16 SIX MONTHS ON TOBACCO ISSUES, UNTIL I BECAME APPOINTED AS A
17 DIRECTOR OF THE CDC'S OFFICE ON SMOKING AND HEALTH.

18 Q. NOW, YOU WERE IN YOUR TRAINING AT THE TIME THAT
19 YOU GOT APPOINTED?

20 A. I WAS FINISHING MY TRAINING. I WAS IN MY LAST
21 YEAR OF TRAINING AT THE TIME THAT I WAS APPOINTED AS
22 DIRECTOR OF THE CDC'S OFFICE ON SMOKING AND HEALTH.

23 Q. AND IS THAT UNUSUAL, THAT SOMEBODY JUST FINISHING
24 THEIR TRAINING WOULD GET AN APPOINTMENT LIKE THAT?

25 A. YES, I'D SAY SO.

26 Q. WERE YOU THE FIRST PERSON TO HAVE GOTTEN THAT
27 APPOINTMENT, GOING DIRECTLY FROM YOUR TRAINING?

28 A. I THINK I WAS THE YOUNGEST PERSON TO HAVE BEEN

0768
1 DIRECTOR OF THE OFFICE.

2 THE OFFICE ON SMOKING AND HEALTH WAS AND
3 CONTINUES TO BE A DIVISION OF THE CDC. THE WAY THE CDC IS
4 ORGANIZED, YOU HAVE SEVERAL CENTERS, AND THEN THE CENTERS
5 HAVE DIVISIONS. SO THE NEXT LAYER DOWN IN BUREAUCRACY IS A
6 DIVISION.

7 AND SO THE OFFICE ON SMOKING AND HEALTH WAS A
8 DIVISION AND I WAS A DIVISION DIRECTOR, THE OFFICE
9 DIRECTOR.

10 AND SO IT WAS UNUSUAL FOR SOMEBODY OF MY AGE AT
11 THE TIME TO BE A DIVISION DIRECTOR.

12 Q. OKAY. AND WHAT DID THAT ENTAIL, BEING THE
13 DIVISION DIRECTOR?

14 A. THE OFFICE ON SMOKING AND HEALTH AT THE TIME --
15 AND THIS WAS JANUARY 1987 -- WAS THE LEAD FEDERAL OFFICE ON
16 SMOKING AND HEALTH, MOST WELL-KNOWN FOR PUBLISHING THE
17 SURGEON GENERAL'S REPORT ON SMOKING WHICH COMES OUT MOST
18 YEARS. I HAVE A NUMBER OF THEM THAT YOU SAW ME STRUGGLING
19 TO BRING IN THIS MORNING.

20 THERE HAVE BEEN SOMETHING LIKE 25 SURGEON
21 GENERAL'S REPORTS ON SMOKING THAT HAVE COME OUT SINCE THAT
22 FIRST HISTORIC REPORT IN 1964. AND SO THAT'S WHAT THE
23 OFFICE IS MOST WELL-KNOWN FOR, FOR PUTTING OUT THOSE
24 REPORTS, OF COURSE, OVER THE NAME OF THE SURGEON GENERAL.

25 I'M WORKING WITH THE SURGEON GENERAL, BUT THE
26 OFFICE DOES THE WORK IN PRODUCING THOSE REPORTS.

27 Q. AND THE SURGEON GENERAL GETS THE CREDIT; IS THAT
28 IT?

0769
1 A. WELL, HE GETS HIS NAME ON IT. HE PRESENTS IT TO
2 THE PUBLIC AND TO THE MEDIA. HE TALKS ABOUT IT ALL THE
3 TIME.

4 Q. HE OR SHE? THERE WAS ONE WOMAN.

5 A. I STAND CORRECTED. ABSOLUTELY.

6 I WORKED WITH -- THERE WERE A COUPLE OF -- AS A

7 MATTER OF FACT, I WORKED WITH ONE OF THEM, DR. ANTONIA
8 NOVELLO, WHO PUT OUT THIS REPORT IN 1990 ON THE BENEFITS OF
9 QUITTING SMOKING (INDICATING).

10 AND SO THAT'S WHAT THE OFFICE IS MOST WELL-KNOWN
11 FOR.

12 BUT IT DOES OTHER THINGS BESIDES THAT. IT
13 CONDUCTS A NATIONAL PUBLIC EDUCATION PROGRAM, A CAMPAIGN ON
14 SMOKING AND TOBACCO, TO HELP EDUCATE THE PUBLIC ABOUT THE
15 DANGERS OF SMOKING AND USING OTHER TOBACCO PRODUCTS, CIGARS,
16 PIPES, SNUFF, CHEW.

17 IT COLLECTS ALL OF THE MEDICAL AND TECHNICAL
18 LITERATURE ON SMOKING AND HEALTH.

19 IT HAS A COMPUTERIZED DATABASE WHERE IT KEEPS ALL
20 OF THE ARTICLES THAT IT BECOMES AWARE OF THAT ARE ON
21 RESEARCH OF TOBACCO. 60 OR 70,000 ARTICLES OR REPORTS ON
22 TOBACCO ARE IN ITS DATABASE.

23 SO IT MAINTAINS THAT DATABASE, HAS IT ON ITS
24 WEBSITE WHERE PEOPLE CAN SEARCH THROUGH IT. IT SUPPORTS
25 PROGRAMS AT THE STATE LEVEL. ALL 50 STATES NOW HAVE
26 PROGRAMS IN TOBACCO CONTROL, WHICH ARE TYPICALLY RUN BY
27 STATE HEALTH DEPARTMENTS.

28 AND THEY RECEIVE FUNDING FROM THE FEDERAL

0770

1 GOVERNMENT, MOST OF THAT FROM THE CDC. SO THE CDC SUPPORTS
2 WORK AT THE STATE LEVEL ON TOBACCO AND HEALTH.

3 Q. ABOUT HOW MANY PEOPLE ARE WE TALKING ABOUT IN THE
4 OFFICE OF SMOKING AND HEALTH?

5 A. WHEN I WAS THERE, THE NUMBER OF STAFF WAS BETWEEN
6 18 AND 25. IT WAS ABOUT 18 WHEN I GOT THERE, AND FOUR YEARS
7 LATER, IT HAD GROWN TO ABOUT 25 STAFF. NOW IT'S A BIT OVER
8 100.

9 I BELIEVE THEIR BUDGET HAS INCREASED
10 SIGNIFICANTLY IN RECENT YEARS.

11 Q. IN THE PAST, WHILE YOU WERE THERE, THE BUDGET
12 WOULD BE DETERMINED BY WHATEVER POLITICAL PROCESS? YOU GOT
13 WHATEVER MONEY THERE WAS ALLOCATED TO YOUR DEPARTMENT?

14 A. CORRECT. THE PRESIDENT SUBMITS HIS -- I DON'T
15 THINK I CAN USE "OR HER" YET.

16 Q. NOT YET. NOT YET.

17 A. THE PRESIDENT SUBMITS HIS BUDGET THAT HE PROPOSES
18 TO THE CONGRESS. AND THEN THE CONGRESS APPROVES THE BUDGET
19 OR CHANGES THE BUDGET, AND THEN APPROVES IT.

20 AND SO IN THAT BUDGET WOULD BE A LINE ITEM FOR
21 THE OFFICE ON SMOKING AND HEALTH.

22 AND WHILE I WAS THERE, IT WAS 3.5 MILLION, WHERE
23 IT WAS FOR ABOUT EIGHT YEARS IN A ROW. AND SO THAT WAS THE
24 BUDGET THAT WE HAD TO DEAL WITH.

25 Q. AND THAT BUDGET WOULD COVER EVERYTHING THAT YOUR
26 OFFICE NEEDED TO DO, THE EDUCATION, THE RESEARCH, THE
27 PUTTING TOGETHER THE SURGEON GENERAL REPORTS; IS THAT
28 CORRECT?

0771

1 A. CORRECT. OCCASIONALLY, WE MIGHT PARTNER WITH
2 ANOTHER AGENCY THAT MIGHT PROVIDE SOME SUPPLEMENTAL FUNDING
3 OF THEIR OWN, BUT THERE WASN'T VERY MUCH OF THAT WHEN I WAS
4 DIRECTOR OF THE OFFICE.

5 Q. OKAY. AND HOW LONG DID YOU REMAIN DIRECTOR OF
6 THE OFFICE?

7 A. ABOUT FOUR YEARS, FROM 1987 TO 1991.

8 Q. OKAY. AND DURING THAT TIME PERIOD, DID YOUR ROLE
9 CHANGE IN ANY WAY, OR WAS IT PRETTY MUCH WHAT YOU'VE BEEN
10 DESCRIBING?

11 A. NOT SIGNIFICANTLY. OBVIOUSLY, I DID OTHER THINGS

12 BESIDES JUST THE ONES THAT I MENTIONED. I WAS INVOLVED IN
13 VARIOUS OUTSIDE ORGANIZATIONS, THE WORLD HEALTH
14 ORGANIZATION, THE AMERICAN MEDICAL ASSOCIATION, A VARIETY OF
15 OTHER THINGS.

16 AT THE CDC, MY ROLE WAS PRETTY CONSTANT DURING MY
17 FOUR YEARS AS DIRECTOR OF THE OFFICE ON SMOKING AND HEALTH.

18 Q. DURING THE TIME PERIOD THAT YOU WERE THE DIRECTOR
19 OF THE OFFICE OF SMOKING AND HEALTH, HOW MANY SURGEON
20 GENERAL REPORTS WERE PUT OUT?

21 A. WE PUT OUT THREE REPORTS. AND WE WERE ABOUT HALF
22 DONE WITH THE FOURTH REPORT WHEN I LEFT, AND IT CAME OUT A
23 YEAR AFTER I LEFT.

24 AND THE FIRST REPORT -- DO YOU WANT ME TO MENTION
25 THEM?

26 Q. YES. WHICH ONE?

27 A. THE FIRST REPORT IS THE SURGEON GENERAL'S REPORT
28 IN 1988 CALLED "NICOTINE ADDICTION, THE HEALTH CONSEQUENCES

0772
1 OF SMOKING."

2 AND THAT WAS PUT OUT BY FORMER SURGEON GENERAL C.
3 EVERETT KOOP.

4 Q. AND WHAT WAS YOUR -- DID YOU HAVE A SPECIFIC ROLE
5 IN THAT 1988 SURGEON GENERAL'S REPORT?

6 A. YES. I HAD ROLES IN ALL OF THESE DIFFERENT
7 REPORTS. AND ONE ROLE I HAD FOR EVERY ONE OF THEM WAS TO
8 OVERSEE THE PRODUCTION OF THE REPORTS.

9 Q. WERE YOU SENIOR EDITOR?

10 A. I WAS SENIOR EDITOR ON THE SECOND AND THIRD
11 REPORTS.

12 Q. OKAY.

13 A. IF YOU LOOK AT THE ACKNOWLEDGMENTS PAGE OF THE
14 REPORT, THE FIRST LINE SAYS: "THIS REPORT WAS PREPARED BY
15 THE DEPARTMENT OF HEALTH AND HUMAN SERVICES UNDER THE
16 GENERAL EDITORSHIP OF THE OFFICE ON SMOKING AND HEALTH,
17 RONALD M. DAVIS, M.D., DIRECTOR."

18 SO THAT WAS MY ROLE. THAT WAS ONE OF MY ROLES
19 FOR ALL OF THESE REPORTS, TO OVERSEE THE PRODUCTION OF THE
20 REPORT FROM A TO Z.

21 Q. AND BEFORE YOU GO ON TO THE NEXT ONE, AND THEN
22 WE'LL TALK ABOUT EACH ONE OF THEM, CAN YOU GIVE US AN IDEA
23 HOW ONE OF THESE REPORTS IS PUT TOGETHER.

24 WHAT IS THE PROCESS?

25 A. IT'S A VERY ELABORATE PROCESS TO PUT THESE
26 REPORTS TOGETHER. WE TALKED ABOUT THE PEER REVIEW PROCESS A
27 FEW MOMENTS AGO FOR JOURNALS.

28 AND THESE REPORTS INVOLVE A PEER REVIEW PROCESS
0773

1 ALSO THAT GOES WAY BEYOND WHAT MEDICAL JOURNALS USE, BECAUSE
2 MANY DOZENS OF EXPERTS ARE INVOLVED IN WRITING AND READING
3 AND REVIEWING ALL OF THE DIFFERENT SECTIONS OF THESE
4 REPORTS.

5 I DON'T KNOW HOW MUCH DETAIL YOU WANT ME TO GO
6 INTO, BUT THE FIRST THING THAT HAPPENS WITH A REPORT IS THAT
7 WE HAVE TO CHOOSE A TOPIC FOR THE REPORT.

8 Q. AND HOW DOES THAT GET CHOSEN?

9 A. THAT GETS CHOSEN BY THE SURGEON GENERAL, IN
10 CONSULTATION WITH THE OFFICE ON SMOKING AND HEALTH.

11 SO TYPICALLY, THE OFFICE ON SMOKING AND HEALTH,
12 THE DIRECTOR OF THE OFFICE USUALLY, WOULD MEET WITH THE
13 SURGEON GENERAL AND PERHAPS SOME OTHER FEDERAL OFFICIALS AND
14 SUGGEST SOME TOPICS THAT THE REPORT MIGHT FOCUS ON.

15 Q. AND WERE YOU INVOLVED IN THAT DISCUSSION?

16 A. YES.

17 Q. AND WERE THERE OTHER TOPICS THAT WERE PROPOSED?
18 A. THIS WAS ONE OF THE TOPICS THAT WAS AT THE TOP OF
19 THE LIST BY THE TIME I GOT TO THE OFFICE ON SMOKING AND
20 HEALTH (INDICATING). SO THIS TOPIC WAS BEING CONSIDERED
21 BEFORE I BECAME DIRECTOR.

22 Q. AND WHY WAS IT AT THE TOP OF THE LIST?

23 A. I DON'T KNOW EXACTLY WHY THE SURGEON GENERAL AND
24 OTHER FEDERAL OFFICIALS WERE THINKING ABOUT THIS TOPIC AT
25 THE TIME, BUT IT CERTAINLY WAS AN EXTREMELY IMPORTANT
26 TOPIC.

27 OUR SUCCESS IN REDUCING SMOKING IN OUR SOCIETY
28 DEPENDS CRITICALLY ON UNDERSTANDING THE ADDICTION PROCESS

0774

1 AND HELPING PEOPLE DEAL WITH IT WHEN THEY TRY TO QUIT,
2 THROUGH MEDICATIONS, FOR EXAMPLE, LIKE NICOTINE GUM AND THE
3 NICOTINE PATCH, WHICH TREAT THE ADDICTION.

4 SO THAT I PRESUME WOULD BE THE REASON WHY THE
5 SURGEON GENERAL WAS ALREADY THINKING ABOUT THIS TOPIC WHEN I
6 BECAME DIRECTOR OF THE OFFICE ON SMOKING AND HEALTH.

7 Q. WAS IT A TOPIC THAT WAS ON YOUR MIND, IN YOUR
8 CONCERN?

9 A. YES, ABSOLUTELY. I MEAN, IT WAS THE OFFICE ON
10 SMOKING AND HEALTH AND THE SURGEON GENERAL AND MANY OTHER
11 THE EDITORS OF THE PAST REPORTS WHO WERE THINKING ABOUT THIS
12 TOPIC.

13 Q. HADN'T THE ISSUE OF NICOTINE ADDICTION BEEN SORT
14 OF PUT TO REST IN THE 1964 REPORT?

15 A. WELL, IT WAS DISCUSSED IN THE 1964 REPORT. IT
16 WAS DISCUSSED IN LATER REPORTS FROM THE SURGEON GENERAL AND
17 FROM THE NATIONAL INSTITUTE ON DRUG ABUSE, WHICH IS CALLED
18 NIDA. IT WAS REFERRED TO -- IT WAS DISCUSSED IN, FOR
19 EXAMPLE, THE 1979 SURGEON GENERAL'S REPORT. I DIDN'T BRING
20 THAT WITH ME BECAUSE IT'S ABOUT THREE TIMES AS BIG AS THIS
21 ONE (INDICATING). IT'S BLUE COLORED.

22 AND SOME PEOPLE CALL THAT THE BLUE WHALE, SO I
23 DIDN'T BRING THE BLUE WHALE WITH ME TODAY. IT DISCUSSES
24 NICOTINE ADDICTION IN SOME DETAIL, ALTHOUGH I THINK IT USES
25 THE TERM "DEPENDENCE," TOBACCO DEPENDENCE OR NICOTINE
26 DEPENDENCE IN ITS REVIEW OF THAT TOPIC.

27 SO IT WAS REVIEWED THROUGH THE YEARS IN A VARIETY
28 OF REPORTS AND TESTIMONY TO CONGRESS FROM SOME FEDERAL

0775

1 OFFICIALS, BUT THE INFORMATION HAD NOT BEEN PULLED TOGETHER
2 IN ITS TOTALITY IN A SINGLE REPORT.

3 AND GIVEN THAT THERE CONTINUED TO BE DISCUSSION
4 ABOUT ADDICTION, SOME PARTIES ATTEMPTED TO GENERATE
5 CONTROVERSY ABOUT ADDICTION. AND AS A RESULT, THE SURGEON
6 GENERAL AND OTHERS OF US DECIDED THAT A COMPREHENSIVE REPORT
7 ON THE TOPIC THAT WOULD REVIEW ALL OF THE EVIDENCE WOULD BE
8 HELPFUL.

9 Q. NOW, WAS THERE A PARTICULAR SLANT OR
10 DETERMINATION AS TO WHAT THE OUTCOME OF THE REPORT WAS GOING
11 TO BE BEFORE THE REPORT WAS DONE?

12 A. WELL, LET ME ANSWER THAT THIS WAY: THE FEDERAL
13 GOVERNMENT, FEDERAL OFFICIALS HAD ALREADY CONCLUDED IN PAST
14 REPORTS AND IN TESTIMONY TO CONGRESS THAT NICOTINE WAS AN
15 ADDICTIVE DRUG OR A DEPENDENCE-PRODUCING DRUG, AND
16 CIGARETTES WHICH CONTAIN NICOTINE ARE ADDICTING OR
17 DEPENDENCE-PRODUCING.

18 I'M USING BOTH TERMS BECAUSE, AT DIFFERENT POINTS
19 IN TIME, IN DIFFERENT PUBLICATIONS, YOU SEE DIFFERENT TERMS,
20 USED BUT THEY'RE ALL SYNONYMOUS. THEY'RE INTERCHANGEABLE.

21 SO THE VARIOUS FEDERAL OFFICIALS AND FEDERAL

22 GOVERNMENTS HAD ALREADY TALKED ABOUT NICOTINE ADDICTION AND
23 NICOTINE DEPENDENCE, AND STATEMENTS HAD BEEN MADE VERY
24 CLEARLY THAT THIS IS NOT JUST A HABIT, A SIMPLE HABIT LIKE
25 TAKING A SHOWER OR EATING CHOCOLATE, EATING GUMMY BEARS OR
26 WHATEVER. THIS IS AN ADDICTING DRUG THAT WE ARE TALKING
27 ABOUT.

28 AND THAT BEING THE CASE, THOUGH, WHEN WE STARTED
0776

1 WORKING ON THIS REPORT, WE IN A SENSE WIPED THE SLATE
2 CLEAN. WE WANTED TO LOOK AT ALL OF THE EVIDENCE, ASSUME
3 NOTHING AT THE BEGINNING, DEVELOP CRITERIA TO DECIDE WHETHER
4 A DRUG IS ADDICTING OR NOT, AND THEN SEE WHAT THE EVIDENCE
5 SHOWED. AND THAT'S WHAT WE DID.

6 Q. AND WE'LL TALK MORE ABOUT THE REPORT AND ITS
7 SPECIFICITY. I THINK WE WERE GOING TO GO THROUGH WHAT OTHER
8 SURGEON GENERAL REPORTS YOU WERE INVOLVED IN HELPING
9 PRODUCE.

10 A. THE NEXT REPORT AFTER THE 1988 REPORT WAS THE
11 1990 REPORT.

12 AND AS I MENTIONED, THIS WAS ON THE TOPIC OF
13 HEALTH BENEFITS OF QUITTING SMOKING (INDICATING). MOST OF
14 THESE REPORTS ARE ON THE DANGERS OF SMOKING. ONE WAS ON
15 CANCERS. ONE WAS ON HEART DISEASE. ONE WAS ON LUNG
16 DISEASE, WHAT DOES SMOKING DO TO YOUR LUNGS, TO YOUR HEART,
17 AND TO CANCER CAUSATION.

18 THIS REPORT FOR THE FIRST TIME LOOKED AT THE FLIP
19 SIDE OF SMOKING, AND THAT IS: WHAT HAPPENS WHEN YOU QUIT
20 SMOKING? DOES YOUR CANCER RISK GO DOWN? DOES YOUR HEART
21 DISEASE RISK GO DOWN? DOES YOUR RISK OF EMPHYSEMA OR LUNG
22 DISEASE GO DOWN? AND IF IT DOES, HOW QUICKLY AND HOW MUCH
23 DOES IT GO DOWN?

24 SO THAT WAS WHAT THIS REPORT WAS ALL ABOUT. AND
25 THIS WAS ISSUED BY FORMER SURGEON GENERAL ANTONIA NOVELLO.

26 Q. AND WHAT WAS YOUR ROLE IN THAT ONE?

27 A. MY ROLE?

28 Q. BESIDES THE GENERAL OFFICE OVERSEEING.

0777

1 A. BESIDES THE ROLE THAT WE ALREADY DISCUSSED, I WAS
2 ALSO TO SERVE AS A SCIENTIFIC EDITOR OF THE REPORT.

3 Q. ALL RIGHT. NOW, EXPLAIN TO US WHAT THE
4 SCIENTIFIC EDITOR IS AND DOES.

5 A. WE STARTED A WHILE BACK TALKING ABOUT THE PROCESS
6 FOR PRODUCING THESE REPORTS. AND I THINK WE GOT THROUGH
7 MAYBE THE FIRST STEP OF PICKING A TOPIC.

8 BUT THERE ARE ABOUT 10 OTHER STEPS, AND WE CAN GO
9 BACK TO THOSE, IF YOU LIKE.

10 Q. I'M NOT A LINEAR THINKER. I'M SORRY.

11 A. WELL, I DON'T WANT TO BE TALKING UP HERE FOR 30
12 MINUTES IN A ROW EITHER, SO I'M SURE IF YOU WANT TO COME
13 BACK TO THOSE OTHER STEPS, WE CAN DO THAT. I'D BE HAPPY TO
14 DO THAT.

15 BUT ANOTHER KEY STEP AT THE VERY BEGINNING IS TO
16 PUT TOGETHER A TEAM OF SCIENTIFIC EDITORS, AND THEY HELP
17 OVERSEE THE PROCESS. THEY DEVELOP AN OUTLINE FOR THE
18 REPORT. THEY DECIDE WHAT THE DIFFERENT CHAPTERS WILL BE ALL
19 ABOUT. THEY DECIDE WHICH EXPERTS WE WANT TO ASK TO WRITE
20 PIECES OF THE REPORT. THEY DECIDE WHICH EXPERTS WE WILL USE
21 TO REVIEW WHAT THE OTHER EXPERTS HAVE WRITTEN. SO THEY ARE
22 PEER REVIEWERS, AS WE DISCUSSED BEFORE. SO THE EDITORS WILL
23 DECIDE WHO THE PEER REVIEWERS WILL BE.

24 THEN WE GET BACK COMMENTS FROM THE PEER
25 REVIEWERS, AND THE EDITORS WILL DECIDE WHAT CHANGES DO WE
26 NEED TO MAKE IN THE REPORT BASED ON COMMENTS FROM THESE

27 EXPERTS, PEER REVIEWERS?
28 SOMETIMES, IF WE SENT OUT A CHAPTER TO FIVE
0778
1 DIFFERENT PEOPLE, THREE PEOPLE WILL TELL US ONE THING AND
2 TWO PEOPLE WILL TELL US ANOTHER THING.
3 SO THE EDITORS WILL HAVE TO DECIDE: "HOW DO WE
4 WEIGH ALL OF THESE COMMENTS? AND WHAT CHANGES DO WE MAKE?"
5 SO THOSE ARE THE KINDS OF THINGS THAT THE
6 SCIENTIFIC EDITORS DO.
7 Q. AND GENERALLY, OR AT LEAST IN THE ONES YOU WERE
8 INVOLVED IN, HOW MANY SCIENTIFIC EDITORS WERE THERE?
9 A. TYPICALLY, BETWEEN FOUR AND SIX. AND SO FOR THE
10 1990 REPORT, TO GET BACK TO YOUR QUESTION, I WAS ONE OF THE
11 SIX SCIENTIFIC EDITORS FOR THE 1990 REPORT (INDICATING).
12 THE 1988 REPORT ON NICOTINE ADDICTION HAD FOUR
13 SCIENTIFIC EDITORS. AND I WAS NOT ONE OF THOSE.
14 ONE OF THOSE WAS DR. NEAL BENOWITZ, WHO I THINK
15 IS INVOLVED IN THIS CASE, OR WILL BE.
16 Q. AND YOU KNOW AND HAVE WORKED WITH DR. BENOWITZ?
17 A. THAT'S RIGHT; I HAVE.
18 ONE THING I HAVEN'T MENTIONED YET IS THAT THESE
19 REPORTS TYPICALLY TAKE 16 TO 18 MONTHS TO PUT TOGETHER.
20 IT'S AN INCREDIBLE AMOUNT OF WORK. YOU CAN IMAGINE PUTTING
21 A 600-PAGE REPORT TOGETHER IN 18 MONTHS, 16 TO 18 MONTHS.
22 AND SO WHEN ONE IS OVERSEEING THE PROCESS LIKE I
23 DID, ONE WOULD WORK VERY CLOSELY WITH THE SCIENTIFIC
24 EDITORS, SUCH AS DR. BENOWITZ.
25 Q. AND IS DR. BENOWITZ SOMEBODY WHO IS WELL
26 RESPECTED IN REGARD TO NICOTINE ADDICTION?
27 MR. FURR: EXCUSE ME. OBJECTION, YOUR HONOR.
28 THIS IS NOT A PROPER SUBJECT FOR EXPERT TESTIMONY.
0779
1 DR. BENOWITZ IS GOING TO BE A WITNESS IN THE
2 CASE.
3 MS. CHABER: REPUTATION IN THE COMMUNITY.
4 THE COURT: SHE'S OFFERING THIS AS EVIDENCE OF
5 REPUTATION IN THE COMMUNITY.
6 MR. FURR: MY OBJECTION, THIS IS AN IMPROPER
7 SUBJECT FOR EXPERT TESTIMONY.
8 THE COURT: OVERRULED.
9 MS. CHABER: Q. YOU MAY ANSWER.
10 A. YOUR QUESTION WAS: IS HE AN EXPERT?
11 Q. IS HE WELL RESPECTED AS AN EXPERT IN NICOTINE
12 ADDICTION?
13 A. I WOULD SAY THAT HE IS ONE OF THE TOP TWO OR
14 THREE WORLD EXPERTS IN NICOTINE ADDICTION AND TOBACCO
15 DEPENDENCE.
16 Q. IS THAT ONE OF THE REASONS THAT SOMEONE LIKE HIM
17 GETS CHOSEN TO BE A SCIENTIFIC EDITOR OF A REPORT ON
18 NICOTINE ADDICTION?
19 A. ABSOLUTELY. THESE REPORTS OVER THE YEARS, IN MY
20 HUMBLE OPINION, HAVE BEEN AMONG THE BEST GOVERNMENT
21 DOCUMENTS THAT HAVE BEEN PRODUCED, AND CERTAINLY ARE THE
22 MOST WELL RESPECTED TECHNICAL AND SCIENTIFIC DOCUMENTS IN
23 TOBACCO AND HEALTH IN 30 OR MORE YEARS THAT HAVE COME OUT OF
24 ANY ORGANIZATION OR AGENCY.
25 SO TO MAINTAIN THAT REPUTATION, TO EARN THAT
26 REPUTATION, WE HAVE TO HAVE THE BEST PEOPLE IN THE WORLD,
27 THE PEOPLE IN THE UNITED STATES, AT LEAST, IF NOT THE BEST
28 PEOPLE IN THE WORLD, HAVING A LEAD ROLE TO PUT THESE THINGS
0780
1 TOGETHER.
2 Q. AND JUST GOING BACK FOR A MINUTE TO THE 1990

3 REPORT ON THE HEALTH BENEFITS OF -- THE HEALTH BENEFITS OF
4 THE CESSATION OF SMOKING -- I PROBABLY DIDN'T SAY THAT
5 EXACTLY CORRECTLY -- DID THAT ALSO LOOK AT SUCCESS RATES OR
6 FAILURE RATES OF PEOPLE ATTEMPTING TO QUIT SMOKING?

7 A. YES, IT DID. THERE'S AN APPENDIX TO THIS REPORT
8 ENTITLED "NATIONAL TRENDS IN SMOKING CESSATION."

9 SO THAT LOOKED AT HOW MANY PEOPLE HAVE BEEN
10 QUITTING IN THE PAST MANY YEARS, WHO IS QUITTING, WHO IS NOT
11 QUITTING, WHAT MEDICATIONS OR BEHAVIORAL TREATMENTS ARE
12 AVAILABLE TO HELP PEOPLE QUIT, THOSE KINDS OF THINGS.

13 Q. WE'LL COME BACK TO THE DETAILS OF THAT.

14 SO NOW LET ME SEE IF I CAN GO BACK TO 17
15 QUESTIONS AGO.

16 AFTER THE SCIENTIFIC EDITORS ARE SELECTED, WHAT'S
17 THE NEXT STEP IN THE PROCESS?

18 A. I'D BE HAPPY TO ANSWER THAT QUESTION, BUT I JUST
19 REALIZED THAT I'M NOT THINKING LINEARLY MYSELF, BECAUSE I
20 WENT FROM THE '88 REPORT TO THE 1990 REPORT.

21 Q. YOU SKIPPED 1989?

22 A. I SKIPPED THE 1989 REPORT.

23 YOU TELL ME WHEN TO GO BACK TO THAT, IF YOU WANT
24 ME TO.

25 Q. OKAY. JUST TELL US WHAT THE NEXT PROCESS IS AND
26 WE CAN GO ON TO 1989.

27 A. OKAY.

28 Q. HOPEFULLY, I HAVE NOT CONFUSED EVERYONE.

0781

1 A. WELL, THE TOPIC IS CHOSEN. I MENTIONED THAT WE
2 PUT TOGETHER OUR TEAM OF SCIENTIFIC EDITORS. WE DEVELOP AN
3 OUTLINE OF THE REPORT.

4 AND THEN, WHEN I WAS THERE, WE WOULD TAKE THAT
5 OUTLINE, WHICH WOULD LIST THE CHAPTERS OF THE REPORT THAT WE
6 WERE THINKING ABOUT AND MAYBE SECTIONS OF THE CHAPTERS, AND
7 WE MIGHT SEND THAT OUT TO 20, 25 EXPERTS AND SAY, "OKAY,
8 HERE IS AN OUTLINE FOR THIS REPORT. TELL US WHAT YOU THINK
9 ABOUT THE OUTLINE. ARE THE RIGHT TOPICS COVERED? ARE THERE
10 TOPICS ON THIS OUTLINE THAT SHOULDN'T BE HERE? ARE THERE
11 TOPICS THAT AREN'T ON THE OUTLINE THAT WE OUGHT TO PUT IN
12 HERE? IS THE BALANCE CORRECT?" AND THOSE KIND OF THINGS.

13 JUST TO GIVE YOU A SENSE OF HOW ELABORATE THE
14 WHOLE PROCESS IS, WE ACTUALLY SEND THE OUTLINE OF THE REPORT
15 OUT FOR PEER REVIEW. THEN WE WOULD REVISE THE OUTLINE.

16 THEN WE WOULD KNOW WHICH CHAPTERS WOULD BE PART
17 OF THE REPORT. AND THEN WE HAD TO IDENTIFY AUTHORS.

18 Q. HOW WOULD YOU GO ABOUT DOING THAT?

19 A. WE'D TAKE A PARTICULAR CHAPTER. AND ONE CHAPTER,
20 FOR EXAMPLE, IN THE NICOTINE ADDICTION REPORT, WAS METHODS
21 OF TREATING NICOTINE ADDICTION, METHODS OF HELPING PEOPLE TO
22 QUIT SMOKING, WHETHER IT WAS THE GUM, HYPNOSIS OR
23 ACUPUNCTURE, OR QUIT-SMOKING CLASSES, GIVING PEOPLE
24 MATERIALS. WHATEVER THE INTERVENTION IS, WHAT RESEARCH HAS
25 BEEN DONE ON IT? WHAT'S ITS EFFECTIVENESS? SEE, WE HAD A
26 WHOLE CHAPTER ON THAT.

27 SO FOR THAT CHAPTER, WE WOULD PICK SOMEBODY TO
28 WRITE THAT CHAPTER WHO WAS AN EXPERT IN THAT AREA. SO WE

0782

1 WOULD PICK PEOPLE TO AUTHOR SECTIONS OF THE REPORT, WHOLE
2 CHAPTERS OR PARTS OF CHAPTERS, IF THEY HAD EXPERTISE IN THAT
3 AREA.

4 SO THAT WAS DONE. AND WE WOULD CONTRACT WITH
5 EXPERTS, AND THEY WOULD HAVE THREE TO FOUR MONTHS TO PREPARE
6 THEIR CHAPTER.

7 SOMETIMES, ALONG THE WAY, WHILE THEY WERE

8 WRITING, WE WOULD BRING THEM TOGETHER TO MAKE A PRESENTATION
9 TO EACH OTHER ON WHAT THEIR FINDINGS WERE SO FAR. USUALLY,
10 THEY WERE REVIEWING ALL OF THE SCIENTIFIC LITERATURE THAT
11 HAD BEEN PUBLISHED.

12 SOMETIMES, THEY WOULD ACTUALLY DO THEIR OWN DATA
13 ANALYSIS. THEY WOULD ACTUALLY DO THEIR OWN ORIGINAL
14 RESEARCH.

15 SO, FOR EXAMPLE, DURING A FOUR-MONTH WRITING
16 PERIOD, WE MIGHT BRING ALL OF THE AUTHORS TOGETHER AFTER
17 THREE MONTHS, LET THEM PRESENT TO EACH OTHER, CRITIQUE EACH
18 OTHER'S WORK, AND THEN FOR THAT LAST MONTH, THEY COULD GO
19 BACK AND FINISH THEIR WORK BASED ON COMMENTS FROM OTHER
20 EXPERTS.

21 Q. SO THAT'S EVEN BEFORE THE PEER REVIEW PROCESS,
22 THEY'RE GETTING INPUT FROM OTHER PEOPLE?

23 A. EXACTLY. DURING THE WRITING STAGE.

24 THEN, AFTER ABOUT FOUR MONTHS, THEY WOULD SEND
25 OUT THEIR MANUSCRIPT, THEIR PAPER. AND THEN THE EDITORS
26 WOULD REVIEW IT THEMSELVES.

27 AND SOON THEREAFTER, WE WOULD SEND IT OUT FOR
28 PEER REVIEW.

0783

1 SO FOR A PARTICULAR CHAPTER, WE WOULD TRY AND
2 IDENTIFY WHO ARE THE OTHER EXPERTS IN THAT AREA. ONE OF
3 THOSE EXPERTS WAS THE PERSON WHO DRAFTED THE SECTION. WE
4 WOULD TRY AND FIND OTHER EXPERTS WHO COULD THEN REVIEW WHAT
5 THAT AUTHOR HAD WRITTEN, SO WE WOULD SEND IT OUT FOR PEER
6 REVIEW.

7 AND WE MIGHT SEND A CHAPTER OUT OR A SECTION OF A
8 CHAPTER OUT TO ANYWHERE FROM TWO TO 10 PEOPLE. SO SOMETIMES
9 THEY WENT THROUGH WHAT YOU MIGHT CALL AN EXHAUSTIVE REVIEW
10 BY OUTSIDE EXPERTS.

11 Q. AND HOW WOULD YOU DETERMINE WHO SHOULD BE
12 REVIEWING -- I MEAN, PRESUMABLY, YOU PICKED ONE OF THE TOP
13 PEOPLE TO WRITE THE CHAPTER AND SO HOW WOULD YOU DETERMINE
14 WHO SHOULD BE REVIEWING THIS PERSON'S WORK?

15 A. WELL, IN MOST CASES, THERE ARE MORE THAN ONE
16 EXPERT. AND WE WOULD ATTEMPT TO FIND OTHER EXPERTS IN THAT
17 AREA. AND THAT WOULD BE BASED ON THE RESEARCH THAT PEOPLE
18 HAVE DONE AND THE RESEARCH THAT THEY'VE PUBLISHED IN
19 JOURNALS, BOOKS OR THE BOOK CHAPTERS THAT THEY HAVE WRITTEN,
20 THE PRESENTATIONS THAT THEY'VE GIVEN IN CONFERENCES.

21 SO THOSE ARE THE KINDS OF THINGS THAT TELL US WHO
22 KNOWS ABOUT THIS TOPIC AND WHO DOESN'T.

23 Q. SO THEN, THE WRITING IS DONE, IT'S SENT OUT TO
24 SOMEWHERE BETWEEN TWO, 10, WHATEVER THE NUMBER IS ON A
25 PARTICULAR TOPIC.

26 WHAT HAPPENS NEXT?

27 A. THOSE EXPERTS, PEER REVIEWERS, SEND BACK THEIR
28 COMMENTS. THE SCIENTIFIC EDITORS, THE TEAM OF FOUR, FIVE OR

0784

1 SIX EDITORS, WILL LOOK AT ALL THOSE COMMENTS, GO THROUGH
2 THEM ONE BY ONE, AND DECIDE HOW TO MAKE CHANGES, WHETHER
3 THEY WILL MAKE A CHANGE, BASED ON EACH ONE OF THOSE
4 COMMENTS. AND --

5 Q. YOUR PEER REVIEWERS PEER-REVIEWED THE ARTICLES;
6 THAT'S SORT OF THE GAME?

7 A. YES. SO THE EDITORS WOULD THEN -- THE EDITORIAL
8 TEAM WOULD THEN REVISE THE CHAPTERS ACCORDING TO THE PEER
9 REVIEW COMMENTS.

10 AND ONCE THAT HAPPENED, THEN IT WOULD ALL BE PUT
11 TOGETHER IN A DRAFT VOLUME. AND SO YOU MIGHT HAVE A FOUR OR
12 FIVE-INCH THICK REPORT THAT WOULD BE THE DRAFT VOLUME.

13 AND IT WOULD BE LIKE ONE OF THESE (INDICATING) IN
14 SIZE, BUT IT WOULD BE AT THE DRAFT STAGE. AND THAT WOULD BE
15 TAKEN -- THAT WOULD BE TAKEN AND THEN DISTRIBUTED TO TWO
16 FURTHER REVIEWS.

17 Q. AND WHO DO THOSE REVIEWS?

18 A. ONE REVIEW WOULD BE WHAT WE CALLED A SENIOR
19 REVIEW OR A VIP REVIEW. AND THE VIP'S THAT WE ARE TALKING
20 ABOUT WOULD BE PEOPLE WHO ARE VERY SENIOR IN TOBACCO AND
21 HEALTH, PEOPLE WHO HAVE BEEN WORKING IN THE FIELD A LONG
22 TIME, WHO HAD A BROAD RANGE OF KNOWLEDGE.

23 Q. LIKE WHOM?

24 A. FOR EXAMPLE, DR. DAVID BURNS, HE USED TO EDIT
25 THESE REPORTS. HE WAS THE LEAD EDITOR OF SURGEON GENERAL'S
26 REPORTS BACK IN THE EARLY 1980S. AND HE WAS INVOLVED IN THE
27 REPORTS EVEN BEFORE THAT.

28 SO HE WOULD BE A SENIOR REVIEWER ON ALL OF THESE
0785

1 REPORTS. ONCE HE STOPPED BEING THE LEAD EDITOR OF THE
2 REPORTS, HE WOULD KNOW SO MUCH AND HE WOULD HAVE BEEN
3 INVOLVED FOR SO LONG THAT HE WOULD BE AN OBVIOUS SENIOR OR
4 VIP REVIEWER.

5 FORMER SURGEONS GENERAL MIGHT BE SENIOR
6 REVIEWERS, OR PEOPLE WHO HAD BEEN ON THE ORIGINAL SURGEON
7 GENERAL'S ADVISORY COMMITTEE OF SMOKING AND HEALTH BACK IN
8 1964. THOSE PEOPLE WOULD BE SENIOR REVIEWERS. PEOPLE WHO
9 HAD BEEN DIRECTOR OF THE OFFICE ON SMOKING AND HEALTH, SUCH
10 AS MYSELF. ONCE I LEFT THE OFFICE, I BECAME A SENIOR
11 REVIEWER.

12 Q. SO YOU REVIEWED SOME REPORTS THAT WERE DONE EVEN
13 AFTER YOU WERE GONE?

14 A. CORRECT. SO THAT'S ONE OF THOSE ADDITIONAL
15 REVIEWS AT THAT LATER STAGE.

16 Q. THEN WHAT'S THE SECOND?

17 A. AND THERE WOULD TYPICALLY BE ABOUT 25 SENIOR OR
18 VIP REVIEWERS.

19 THE OTHER REVIEW WOULD BE DONE BY FEDERAL
20 AGENCIES, WHAT WE REFER TO AS AGENCY REVIEW.

21 SO THE DRAFT VOLUME, THE DRAFT REPORT, THE WHOLE
22 THING WOULD BE SENT TO MAYBE A DOZEN FEDERAL AGENCIES.

23 THE REPORT, WHEN I WAS THERE, CAME OUT OF THE
24 CDC, BUT WE WOULD WANT TO SEND IT TO NIH.

25 Q. WHICH IS?

26 A. WHICH IS NATIONAL INSTITUTES OF HEALTH. OR AS I
27 MENTIONED, THE LEAD AGENCY ON MEDICAL RESEARCH. WE WOULD
28 SEND THEM A COPY. WE WOULD SEND ONE TO THE FOOD AND DRUG

0786
1 ADMINISTRATION, THE FDA.

2 THE ONE ON PASSIVE SMOKING, WHICH CAME OUT IN
3 1986, THAT WOULD HAVE BEEN SENT TO THE EPA, THE
4 ENVIRONMENTAL PROTECTION AGENCY, BECAUSE THIS IS AN
5 ENVIRONMENTAL ISSUE, PASSIVE SMOKING. IT WOULD BE SENT TO
6 THAT DEPARTMENT.

7 IN SOME CASES, IT MIGHT HAVE BEEN SENT TO THE
8 DEPARTMENT OF AGRICULTURE.

9 SO IT WOULD GO OUT FOR WIDE AGENCY REVIEW.

10 Q. AND THEN WOULD THERE BE CHANGES AND COMMENTS THAT
11 WOULD COME BACK?

12 A. EXACTLY. SO THEN WE WOULD GET THOSE COMMENTS
13 BACK FROM A DOZEN OR SO FEDERAL AGENCIES AND MAYBE UP TO 25
14 PEER -- I'M SORRY -- SENIOR REVIEWERS OR VIP REVIEWERS.

15 AND THEN ONCE AGAIN, THE SENIOR EDITORS, THE
16 SCIENTIFIC EDITORS WOULD TAKE ALL THOSE COMMENTS INTO
17 ACCOUNT, MAKE OTHER CHANGES, AND THEN SUBMIT IT FOR THE

18 FINAL -- PRETTY MUCH THE FINAL STEP IN THE PROCESS, WHICH IS
19 WHAT WE REFER TO AS CLEARANCE.

20 Q. AND WHAT IS THAT?

21 A. FORMAL CLEARANCE, WHICH MEANS IT GOES UP THE
22 BUREAUCRATIC LADDER, AND IT'S REVIEWED BY EVERY STAGE, FROM
23 ME AS THE DIRECTOR OF THE OFFICE ON SMOKING AND HEALTH, ALL
24 THE WAY UP TO THE HEAD OF THE DEPARTMENT OF HEALTH AND HUMAN
25 SERVICES. SO IT WOULD GO UP TO THE HEAD OF THE CENTER THAT
26 THE OFFICE WAS IN, NEXT TO THE HEAD OF THE CDC, THEN THE
27 HEAD OF THE PUBLIC HEALTH SERVICE, THEN THE HEAD OF THE
28 DEPARTMENT OF HEALTH AND HUMAN SERVICES.

0787

1 AND AT EACH STAGE, IT WOULD BE REVIEWED, NOT JUST
2 BY THE PERSON WHO HEADS UP THAT LEVEL, BUT HIS OR HER
3 ADVISERS.

4 SO USUALLY, AT EACH LEVEL, IT'S BEING REVIEWED BY
5 A NUMBER OF PEOPLE. SO IT WOULD GO ALL THE WAY UP THAT
6 LADDER, THAT CHAIN OF COMMAND.

7 AND THEN ONCE AGAIN, WE WOULD GET SOME COMMENTS
8 BACK FROM THOSE PEOPLE, BUT TYPICALLY, MANY FEWER COMMENTS
9 THAN FROM ALL THOSE EARLIER STEPS IN THE PROCESS.

10 THE PEOPLE IN THAT CHAIN OF COMMAND WOULD
11 TYPICALLY BE LOOKING AT THE BIG PICTURE, NOT AT WHAT WAS
12 SAID ON PAGE 153 AND THOSE KINDS OF THINGS. THEY WOULD BE
13 LOOKING AT THE BIG PICTURE.

14 Q. WHAT YOU MEAN BY "LOOKING AT THE BIG PICTURE"?

15 A. WHAT ARE THE OVERALL CONCLUSIONS OF THE REPORT.
16 USUALLY THESE REPORTS CONDENSE 600 PAGES OR 300 PAGES DOWN
17 INTO SOMETHING THAT'S MORE BITE-SIZED. PEOPLE WHO DON'T
18 WANT TO READ 600 PAGES.

19 AND WE MIGHT BE LEFT WITH THREE MAJOR CONCLUSIONS
20 OF THE REPORT, FIVE MAJOR CONCLUSIONS OF THE REPORT.

21 SO IN THAT FINAL PROCESS, THE CLEARANCE PROCESS,
22 A LOT OF THOSE PEOPLE, MAYBE MOST OF THOSE PEOPLE, WOULD BE
23 LOOKING AT THE BIG PICTURE, THE MAJOR CONCLUSIONS OF THE
24 REPORT, PLUS WHAT WAS AT THE BEGINNING OF THE REPORT, THE
25 FORWARD, THE PREFACE, AND THE TRANSMITTAL LETTERS TO
26 CONGRESS, BECAUSE THAT MATERIAL, WHICH WE REFER TO AS THE
27 FRONT MATERIAL, THAT GETS DRAFTED AT THE LATER STAGE OF THE
28 REPORT'S PRODUCTION.

0788

1 AND IF THERE ARE ANY POLICY RECOMMENDATIONS IN
2 THE REPORT, THAT'S WHERE THEY WOULD BE. THEY WOULD BE IN
3 THE SURGEON GENERAL'S PREFACE OR THEY WOULD BE IN THE
4 FORWARD FROM THE HEAD OF THE CDC OR THEY WOULD BE IN THE
5 TRANSMITTAL LETTERS, WHICH ARE THE LETTERS AT THE VERY
6 BEGINNING, WHERE THE HEAD OF THE DEPARTMENT OF HEALTH AND
7 HUMAN SERVICES FORMALLY TRANSMITS THE REPORT TO THE
8 CONGRESS.

9 SO AS THE REPORT WOULD GO THROUGH THE CLEARANCE
10 PROCESS, THOSE PEOPLE WOULD BE LOOKING AT THE BIG PICTURE,
11 THE MAJOR CONCLUSIONS, PLUS THAT FRONT MATERIAL WHERE ANY
12 POLICY ISSUES MIGHT BE DISCUSSED.

13 Q. SO POLITICS MIGHT COME INTO PLAY IN THAT BIG
14 PICTURE?

15 A. THAT'S HAPPENED FROM TIME TO TIME, ALTHOUGH I
16 WOULD HAVE TO SAY THAT THESE REPORTS HAVE BEEN BETTER AT
17 RESISTING POLITICS, PROBABLY MORE THAN MOST GOVERNMENT
18 REPORTS.

19 CERTAINLY, POLITICS WOULD NOT PLAY A ROLE IN THE
20 SCIENTIFIC CONCLUSIONS OF THE REPORT, AND THE SCIENTIFIC
21 EDITORS AND THE AUTHORS WOULD FALL ON THEIR SWORD, SO TO
22 SPEAK, DEFENDING THE SCIENCE IN THE REPORTS.

23 IF POLITICS CAME INTO PLAY, IT WOULD BE IN THE
24 POLICY RECOMMENDATIONS. FOR EXAMPLE, A POLICY
25 RECOMMENDATION FOR THE REPORT ON NICOTINE ADDICTION
26 (INDICATING) WAS --
27 MR. FURR: I OBJECT. THIS IS NONRESPONSIVE.
28 THE COURT: THE QUESTION WAS: "POLITICS MIGHT
0789
1 COME INTO PLAY IN THE BIG PICTURE," BUT WITH A QUESTION MARK
2 AT THE END.
3 THIS IS RESPONSIVE. YOU MAY HAVE OTHER
4 OBJECTIONS.
5 MR. FURR: SAME OBJECTION. THIS IS HEARSAY,
6 YOUR HONOR. IT'S NOT RECITING FINDINGS FROM THE REPORT.
7 THE COURT: ALL RIGHT. WHY DON'T WE GO ON TO
8 THE NEXT QUESTION.
9 MS. CHABER: HE'S THE EDITOR OF IT, YOUR HONOR.
10 THE COURT: CAN YOU ANSWER THAT QUESTION WITHOUT
11 GIVING US THE CONTENTS OF ANY REPORTS?
12 THE QUESTION WAS: "DOES POLITICS COME INTO PLAY
13 IN THE BIG PICTURE?" WHY DON'T YOU ANSWER THAT QUESTION
14 WITHOUT REFERENCE TO SPECIFICS IN ANY REPORTS. THEN THERE
15 WON'T BE AN OBJECTION.
16 MS. CHABER: WE ALREADY -- IT WAS A STIPULATION,
17 I UNDERSTOOD, BETWEEN COUNSEL THAT THE SURGEON GENERAL
18 REPORTS WERE AN EXCEPTION TO --
19 THE COURT: I DON'T KNOW IF THERE ARE.
20 MS. CHABER: THAT WAS STATED ON THE RECORD AS
21 WELL, I BELIEVE.
22 MR. FURR: YOUR HONOR, WE MIGHT NEED A SIDEBAR.
23 MS. CHABER: I WAS GOING TO ASK IF IT'S BREAK
24 TIME.
25 THE COURT: THE ANSWER IS WE'LL TAKE A BREAK IN
26 FIVE MINUTES. WE DON'T NEED TO TAKE A BREAK TO GET THE
27 ANSWER TO THIS QUESTION. THIS QUESTION CAN BE ANSWERED
28 WITHOUT REFERENCE TO THE CONTENTS, THE SPECIFIC CONTENTS OF
0790
1 ANY GIVEN REPORT.
2 SO IF THAT'S THE QUESTION, WHY DON'T WE PROCEED
3 THAT WAY, AND THEN WE'LL TAKE A BREAK IN FIVE MINUTES.
4 AND IF YOU WANT TO DISCUSS THIS, WE CAN DO IT
5 THEN.
6 MS. CHABER: OKAY.
7 THE COURT: ALL RIGHT.
8 THE WITNESS: I THINK I CAN ANSWER THAT QUESTION
9 WITHOUT REFERRING TO WHAT WAS EXACTLY IN THIS REPORT.
10 MS. CHABER: Q. OKAY.
11 A. AND ACTUALLY, THE EXAMPLE THAT I HAD IN MIND
12 DEALS WITH ANOTHER REPORT, WHICH SHALL REMAIN NAMELESS, BUT
13 ANOTHER REPORT CAME TO THE CONCLUSION --
14 THE COURT: I THINK WE ARE GOING TO RUN INTO THE
15 SAME PROBLEM HERE.
16 CAN YOU DO THIS IN A MORE GENERAL WAY?
17 THE WITNESS: SURE.
18 THE COURT: I DON'T KNOW WHETHER THE OBJECTION
19 IS WELL TAKEN OR NOT. I JUST DON'T WANT TO TAKE A RECESS
20 RIGHT NOW TO DEAL WITH IT.
21 IF YOU CAN ANSWER THIS QUESTION WITHOUT GIVING US
22 SPECIFIC SUBSTANTIVE EXAMPLES, BUT GIVE A MORE GENERAL
23 ANSWER, I THINK THAT'S WHAT THE QUESTION IS.
24 THE WITNESS: I WILL TRY.
25 THE COURT: ALL RIGHT.
26 THE WITNESS: ONE KIND OF POLICY ISSUE THAT
27 MIGHT COME UP FOR A SURGEON GENERAL'S REPORT IN GENERAL

28 WOULD BE SHOULD MEDICARE PAY FOR PEOPLE TO TRY AND QUIT
0791
1 SMOKING FOR THEIR MEDICATION, OR FOR A CLASS TO HELP THEM
2 QUIT SMOKING. THAT WOULD BE A POLICY ISSUE. AND ONE MIGHT
3 WANT TO ADDRESS THAT ISSUE IN THE FRONT MATERIAL.
4 THE SURGEON GENERAL MIGHT SAY TO HIMSELF -- AND
5 THIS IS JUST HYPOTHETICAL -- "OKAY. SINCE WE KNOW QUITTING
6 SMOKING IS GOOD FOR YOUR HEALTH AND IS GOOD FOR THE HEALTH
7 OF SENIORS, WHY DOESN'T MEDICARE" -- WHICH PAYS FOR THE
8 HEALTH CARE FOR SENIORS -- "WHY DOESN'T MEDICARE PAY FOR
9 PEOPLE TO QUIT SMOKING?" IT'S A POLICY ISSUE.
10 THAT'S THE KIND OF ISSUE THAT THE SURGEON GENERAL
11 COULD ADDRESS IN HIS PREFACE TO ONE OF THESE REPORTS.
12 AND IF POLITICS COME INTO PLAY, IT WOULD COME
13 INTO PLAY ON A POLICY ISSUE LIKE THAT, NOT ON A SCIENTIFIC
14 ISSUE.
15 MS. CHABER: Q. OKAY. THE REPORT WE SKIPPED
16 BECAUSE WE WERE JUMPING YEARS WAS 1989.
17 DO YOU WANT TO TELL US ABOUT THAT REPORT AND YOUR
18 INVOLVEMENT?
19 A. SURE. AND I SHOULDN'T HAVE SKIPPED OVER IT,
20 BECAUSE IT'S A VERY IMPORTANT REPORT. IT'S WHAT WE REFER TO
21 AS THE SILVER ANNIVERSARY REPORT, WHICH IS WHY IT HAS THE
22 SILVER COVER (INDICATING).
23 THIS REPORT CAME OUT EXACTLY 25 YEARS AFTER THE
24 FIRST SURGEON GENERAL'S REPORT CAME OUT IN 1964. THIS WAS
25 RELEASED ON JANUARY 11TH OF 1989. THE FIRST REPORT WAS
26 RELEASED ON JANUARY 11, 1964.
27 AND BECAUSE IT WAS BEING RELEASED AS A SILVER
28 ANNIVERSARY REPORT, WE DECIDED TO DEDICATE THE THEME OF THE
0792
1 REPORT TO WHAT'S HAPPENED IN SMOKING AND HEALTH OVER 25
2 YEARS. AND SO IT'S ENTITLED "REDUCING THE HEALTH
3 CONSEQUENCES OF SMOKING, 25 YEARS OF PROGRESS."
4 AND IT REVIEWS WHAT HAS HAPPENED OVER 25 YEARS IN
5 OUR KNOWLEDGE ABOUT THE DANGERS OF SMOKING, AND I MEAN
6 SCIENTIFIC KNOWLEDGE, AND THE PUBLIC'S AWARENESS OF THE
7 DANGERS OF SMOKING, WHAT'S HAPPENED IN THE NUMBER OF PEOPLE
8 WHO ARE KILLED BY SMOKING OVER A 25-YEAR PERIOD OF TIME, ARE
9 MORE PEOPLE BEING KILLED BY SMOKING IN THE 1980S THAN IN THE
10 1970S AND SO ON. WHAT'S HAPPENED TO OUR RULES AND
11 REGULATIONS ABOUT SMOKING OVER 25 YEARS? WHAT NEW
12 TREATMENTS DO WE HAVE TO HELP PEOPLE QUIT SMOKING? HOW HAS
13 THAT CHANGED OVER 25 YEARS?
14 SO THAT WAS THE FOCUS OF THAT REPORT. MY
15 INVOLVEMENT IN IT WAS, AS WE DISCUSSED BEFORE, TO OVERSEE
16 THE PRODUCTION OF THE REPORT.
17 BUT LIKE MY INVOLVEMENT IN THE 1990 REPORT, I
18 ALSO SERVED AS A SCIENTIFIC EDITOR OF THIS REPORT. THERE
19 WERE SIX SCIENTIFIC EDITORS OF THIS REPORT, AND I WAS ONE OF
20 THOSE SIX.
21 IN ADDITION TO THE ROLE I PLAYED IN OVERSEEING
22 THE ENTIRE PRODUCTION OF THE REPORT, I ALSO AUTHORED A FEW
23 SECTIONS OF THIS REPORT.
24 THE COURT: DO YOU WANT TO TAKE A BREAK?
25 MS. CHABER: THIS WOULD BE A GOOD TIME.
26 THE COURT: ALL RIGHT. JURORS, LET'S TAKE A
27 15-MINUTE BREAK UNTIL 11:30.
28 PLEASE CONTINUE TO FOLLOW THE ADMONITION. WE'LL
0793
1 SEE YOU BACK AT 11:30.
2 (RECESS TAKEN FROM 11:15 TO 11:40 A.M.)
3 THE COURT: WE ARE BACK ON THE RECORD.

4 YOU MAY PROCEED, MS. CHABER.
5 MS. CHABER: Q. IN THE 1989 REPORT, THE SILVER
6 ANNIVERSARY ISSUE, WHAT WAS THE PURPOSE OF PUTTING THAT
7 TOGETHER?
8 A. BECAUSE OF IT BEING A 25-YEAR ANNIVERSARY REPORT,
9 WE DECIDED TO LOOK BACK AT THE LAST QUARTER OF A CENTURY, AT
10 ALL OF THE CHANGES IN RELATION TO SMOKING AND HEALTH THAT
11 HAD OCCURRED DURING THAT PERIOD TIME.
12 Q. AND DID THAT LOOK AT CHANGES THAT HAD OCCURRED
13 WITH RESPECT TO PUBLIC AWARENESS OF THE HAZARDS OF SMOKING?
14 A. CHAPTER 4 WAS ENTIRELY ON THAT TOPIC.
15 Q. AND I BELIEVE YOU SAID YOU ALSO WROTE A CHAPTER
16 IN THAT REPORT?
17 A. I WROTE SOME PIECES OF THAT REPORT. I WROTE SOME
18 OF CHAPTER 7, WHICH WAS ON TOBACCO CONTROL POLICY.
19 I WORKED CLOSELY WITH THE AUTHOR ON CHAPTER 4,
20 ABOUT PUBLIC AWARENESS OF THE HAZARDS OF SMOKING.
21 Q. AND WHO WAS THAT AUTHOR?
22 A. DR. PAT REMINGTON AT THE UNIVERSITY OF
23 WISCONSIN. HE HAD BEEN A COLLEAGUE OF MINE AT THE CDC WHEN
24 WE BOTH WORKED THERE.
25 I WROTE A LOT OF THE FRONT MATERIAL, THE ORIGINAL
26 DRAFT OF THE FRONT MATERIAL.
27 TYPICALLY, I WOULD WRITE A FAIR AMOUNT OF CHAPTER
28 1 OF THESE REPORTS, WHICH WAS A SUMMARY CHAPTER OF EACH
0794
1 REPORT.
2 Q. OKAY.
3 A. SO I'D HAVE TO GO BACK AND LOOK TO TELL YOU IN
4 DETAIL WHICH SECTIONS I WROTE, BUT THOSE WERE THE MAJOR ONES
5 THAT COME TO MIND.
6 Q. YOU MENTIONED THAT YOU HAD STARTED ON A REPORT --
7 WORKING ON A REPORT BEFORE YOU LEFT THE OFFICE OF SMOKING
8 AND HEALTH.
9 AND WHAT REPORT WAS THAT?
10 A. THAT WAS THE REPORT THAT ULTIMATELY CAME OUT IN
11 1992 ON SMOKING IN THE AMERICAS.
12 Q. AND WHAT WAS THAT?
13 A. THAT WAS AN INTERNATIONAL REPORT. IT LOOKED AT
14 SMOKING IN OUR HEMISPHERE, FOCUSING MOST ON SOUTH AMERICA,
15 CENTRAL AMERICA AND THE CARIBBEAN.
16 THERE WAS A LITTLE BIT ABOUT THE UNITED STATES,
17 CANADA, WHICH ARE PART OF THE AMERICAS, OF COURSE, BUT THE
18 FOCUS WAS MAINLY ON WHAT'S HAPPENING IN THE REST OF THE
19 HEMISPHERE IN TOBACCO AND HEALTH, RECOGNIZING THAT SMOKING
20 IS BECOMING A GREATER PROBLEM IN MANY DEVELOPING REGIONS.
21 THAT'S WHY WE WANTED TO DO AN INTERNATIONAL
22 REPORT. BECAUSE OF THE COMPLEXITY OF THAT REPORT, WHICH
23 LOOKED AT ABOUT 35 DIFFERENT COUNTRIES, IT TOOK MUCH LONGER
24 TO PRODUCE THAN THESE OTHER REPORTS. IT TOOK ABOUT FOUR
25 YEARS TO -- ACTUALLY, ABOUT FOUR YEARS TO PRODUCE THAT
26 REPORT.
27 AND SO WE GOT THE REPORT GOING DURING MY TENURE
28 AS DIRECTOR OF THE OFFICE OF SMOKING AND HEALTH, AND MAYBE
0795
1 WE WERE ABOUT HALF DONE WITH IT.
2 AND THEN IT CAME OUT IN 1992, ABOUT A YEAR AFTER
3 I LEFT THE OFFICE.
4 Q. OKAY. AND WHAT DID YOU DO AFTER YOU LEFT THE
5 OFFICE OF SMOKING AND HEALTH?
6 A. I WENT TO WORK AT THE MICHIGAN DEPARTMENT OF
7 PUBLIC HEALTH AS THEIR CHIEF MEDICAL OFFICER.
8 Q. CAN YOU TELL US ABOUT THAT.

9 A. SURE.
10 Q. WAIT. WAIT. WAIT.
11 MORE PEOPLE, LESS PEOPLE?
12 A. WE WENT FROM -- OH, THE DEPARTMENT OF HEALTH AND
13 HUMAN SERVICES IN THE FEDERAL GOVERNMENT I THINK WAS A
14 LITTLE OVER 100,000. THE STATE OF MICHIGAN WAS 50,000.
15 THE MICHIGAN DEPARTMENT OF PUBLIC HEALTH, WHICH
16 IS PART OF THE STATE GOVERNMENT, WE HAD A STAFF OF ABOUT
17 1,200. AND I WAS THE CHIEF MEDICAL OFFICER.
18 AND ANOTHER TITLE WHICH WE USED SYNONYMOUS WITH
19 THAT WAS MEDICAL DIRECTOR. I WAS BASICALLY THE TOP DOC, THE
20 SURGEON GENERAL OF THE STATE OF MICHIGAN.
21 AND I ALSO SERVED AS DEPUTY DIRECTOR OF THE
22 DEPARTMENT. SO I REPORTED DIRECTLY TO THE DIRECTOR OF THE
23 DEPARTMENT AND WORKED CLOSELY WITH HER IN RUNNING ALL OF THE
24 AFFAIRS OF THE DEPARTMENT.
25 BUT I HAD SPECIAL RESPONSIBILITY FOR MEDICAL
26 PROGRAMS AND POLICIES AS THE HIGHEST PHYSICIAN IN THE
27 DEPARTMENT.
28 Q. AND DID THAT WORK INVOLVE TOBACCO IN ANY WAY?

0796

1 A. YES, IT DID. I WAS DIRECTLY RESPONSIBLE FOR OUR
2 CENTER FOR CHRONIC DISEASE PREVENTION AND HEALTH PROMOTION.
3 AND THAT CENTER AT THE MICHIGAN DEPARTMENT OF PUBLIC HEALTH
4 WAS RESPONSIBLE FOR OUR TOBACCO PROGRAM.
5 AND SO I WORKED CLOSELY WITH THE PEOPLE INVOLVED
6 IN THAT TOBACCO PROGRAM TO DO THE BEST WE COULD IN GETTING
7 THE MESSAGE OUT TO THE 9 MILLION PEOPLE IN MICHIGAN ABOUT
8 THE DANGERS OF SMOKING.
9 Q. AND WHILE YOU WERE IN THAT ROLE, DID YOU ALSO
10 STAY FAMILIAR AND KEEP UP WITH LITERATURE ABOUT TOBACCO?
11 A. YES. VERY MUCH SO. IN FACT, SOON AFTER I GOT TO
12 MICHIGAN TO BE THE MEDICAL DIRECTOR OF THEIR STATE HEALTH
13 DEPARTMENT, I WAS ASKED TO BE THE EDITOR OF A NEW
14 INTERNATIONAL JOURNAL ON TOBACCO WHICH IS CALLED "TOBACCO
15 CONTROL." IT'S PUBLISHED BY THE BRITISH MEDICAL ASSOCIATION
16 IN LONDON.
17 WE HAVE THE AMERICAN MEDICAL ASSOCIATION HERE.
18 THE DOCTORS ORGANIZATION IN THE UNITED KINGDOM IS CALLED THE
19 BMA, THE BRITISH MEDICAL ASSOCIATION. THEY DECIDED TO
20 PUBLISH A JOURNAL ON THIS TOPIC, A PEER-REVIEWED MEDICAL
21 JOURNAL CALLED "TOBACCO CONTROL."
22 AND I WAS ASKED TO BE THE EDITOR OF THAT JOURNAL
23 AT THE SAME TIME THAT I CAME TO MICHIGAN. AND SO I DID THAT
24 IN 1991 AND THROUGH TO THE BEGINNING OF 1998.
25 Q. OKAY. AND WHAT KINDS OF THINGS DID THE TOBACCO
26 CONTROL JOURNAL LOOK AT?
27 A. WELL, TO BE EDITOR OF THAT JOURNAL, TYING THIS
28 INTO YOUR PREVIOUS QUESTION, I HAD TO MAINTAIN MY AWARENESS

0797

1 OF ALL OF THE RESEARCH BEING DONE IN TOBACCO AND HEALTH,
2 BECAUSE THAT WAS THE PURPOSE OF THE JOURNAL. THE PURPOSE OF
3 THE JOURNAL WAS TO REPORT ON RESEARCH IN TOBACCO AND
4 HEALTH.
5 WE WOULD PUBLISH, AND THE JOURNAL CONTINUES TO
6 PUBLISH RESEARCH PAPERS ON TOBACCO, JUST LIKE OTHER JOURNALS
7 DO FROM TIME TO TIME.
8 THE NEW ENGLAND JOURNAL OF MEDICINE OR THE
9 JOURNAL OF THE AMA, THEY PUBLISH ARTICLES AND RESEARCH
10 PAPERS ON TOBACCO, BUT THEY ALSO PUBLISH ON MANY OTHER
11 THINGS.
12 THIS JOURNAL WAS DEVOTED EXCLUSIVELY TO THE TOPIC
13 OF TOBACCO, BUT USING THE SAME PEER-REVIEW PROCESS TO MAKE

14 SURE THAT WHAT WE PUBLISHED WAS GOOD SCIENCE.
15 THE JOURNAL, THOUGH, DOES MORE THAN JUST PUBLISH
16 RESEARCH.
17 Q. WHAT ELSE DOES IT DO?
18 A. IT PUBLISHES COMMENTARIES, BOOK REVIEWS, LETTERS
19 TO THE EDITOR. A VARIETY OF SECTIONS OF THE JOURNAL DEAL
20 WITH THINGS BESIDES JUST PURE SCIENCE, MAINLY TO PROVIDE
21 INFORMATION TO PRACTITIONERS WHO ARE RUNNING PROGRAMS IN
22 SMOKING AND HEALTH, TO TRY AND HELP PEOPLE WHO RUN A PROGRAM
23 FOR A STATE HEALTH DEPARTMENT OR WHO RUN A QUIT-SMOKING
24 CLINIC, TO HELP THEM DO A BETTER JOB IN HELPING PEOPLE QUIT
25 OR IN PREVENTING KIDS FROM TAKING UP SMOKING.
26 SOME OF THOSE SECTIONS WERE AIMED IN LARGE PART
27 AT NONSCIENTISTS. WE WANTED THE JOURNAL TO BE HELPFUL NOT
28 ONLY TO SCIENTISTS BUT ALSO TO NONSCIENTISTS WHO ARE WORKING
0798 IN THE FIELD.

1 Q. OKAY. AND FROM MICHIGAN, WHAT DID YOU DO THEN?
2 A. I WAS AT THE MICHIGAN DEPARTMENT OF PUBLIC HEALTH
3 FROM 1991 TO 1995.
4 AND THEN IN 1995, I TOOK THE POSITION AT THE
5 HENRY FORD HEALTH SYSTEM THAT WE TALKED ABOUT EARLIER, AS
6 DIRECTOR OF THE CENTER FOR HEALTH PROMOTION AND DISEASE
7 PREVENTION AT THAT ORGANIZATION.
8 Q. AND DO YOU LIKEWISE STAY FAMILIAR AND KEEP UP
9 WITH SCIENTIFIC AND MEDICAL LITERATURE ON TOBACCO ISSUES?
10 A. VERY MUCH SO. I WAS EDITOR OF THE JOURNAL
11 TOBACCO CONTROL FOR ABOUT EIGHT YEARS, AS I MENTIONED.
12 I STOPPED DOING THAT IN EARLY 1998, AT THE SAME
13 TIME THAT I TOOK A NEW ROLE WITH THAT ORGANIZATION, AND THAT
14 WAS AS NORTH AMERICAN EDITOR OF THE BRITISH MEDICAL
15 JOURNAL. THAT'S THEIR FLAGSHIP JOURNAL, THEIR BIG JOURNAL.
16 JUST LIKE THE JOURNAL OF THE AMA, THE BRITISH
17 MEDICAL ASSOCIATION PUTS OUT THE BRITISH MEDICAL JOURNAL,
18 WHICH COVERS ALL TOPICS, INCLUDING TOBACCO.
19 SO I HELPED THEM WITH SOME TOBACCO MATERIAL THAT
20 THEY HAD PUBLISHED. BUT IN ADDITION TO THAT, I AM THE
21 PRINCIPAL INVESTIGATOR ON A TOBACCO RESEARCH PROJECT.
22 Q. CAN YOU TELL US ABOUT THAT.
23 A. AND IT'S CALLED "ADDRESSING TOBACCO IN MANAGED
24 CARE." IT'S ACTUALLY MORE THAN JUST RESEARCH.
25 AND MY MAIN ROLE IS TO PROVIDE TECHNICAL
26 ASSISTANCE TO MANAGED CARE ORGANIZATIONS ACROSS THE
27 COUNTRY. WE WORK WITH HMO'S THROUGHOUT THE COUNTRY TO HELP
0799 THEM DO MORE ON TOBACCO AND SMOKING, TO TRY AND DO A BETTER

2 JOB OF DETERMINING WHICH OF THEIR HMO MEMBERS ARE SMOKERS
3 AND ADVISING THEM TO QUIT, AND IN HELPING THEM TO QUIT AND
4 ENCOURAGING THEM TO PAY FOR WAYS TO QUIT SMOKING,
5 ENCOURAGING THEM TO PAY FOR THE NICOTINE PATCH OR ZYBAN,
6 WHICH IS A NEW ORAL MEDICATION TO HELP PEOPLE QUIT SMOKING,
7 OR TO PAY FOR CLASSES OR BEHAVIORAL COUNSELING.
8 SO WE HAVE THIS NATIONAL PROJECT TO HELP HMO'S ON
9 WORK ON TOBACCO AND TO DO BETTER ON THAT TOPIC. AND I'M ONE
10 OF THE LEAD PEOPLE ON THAT PROJECT. IT'S A FOUR-YEAR, \$7
11 MILLION PROJECT, FUNDED PRIMARILY BY THE ROBERT WOOD JOHNSON
12 FOUNDATION.
13 Q. IS THAT A PRIVATE ORGANIZATION?
14 A. THAT'S A PRIVATE FOUNDATION IN NEW JERSEY, WHICH
15 IS PROBABLY THE LARGEST GRANT-MAKING ORGANIZATION IN HEALTH
16 CARE IN THE UNITED STATES. AND THEY HAVE DECIDED TO MAKE
17 THIS ONE OF THEIR TOP PRIORITIES. TOBACCO IS PART OF THEIR
18 PRIORITY FOR FUNDING, FOR GIVING OUT GRANTS.

19 AND SO BECAUSE OF THAT ROLE, AGAIN GETTING BACK
20 TO YOUR QUESTION, I HAVE TO STAY FAMILIAR WITH WHAT'S GOING
21 ON IN TOBACCO, WHETHER IT'S RESEARCH OR QUITTING SMOKING
22 METHODS AND SO ON.

23 Q. NOW, DO YOU YOURSELF DO HANDS-ON PATIENT CARE?

24 A. I DON'T HAVE ONE-ON-ONE PATIENT CARE. I DON'T
25 HAVE THAT KIND OF PRACTICE LIKE A PEDIATRICIAN DOES OR AN
26 INTERNIST DOES OR A SURGEON MIGHT, WHERE HE OR SHE WILL DO
27 SURGERY AND THEN SEE PEOPLE IN CLINIC. I DON'T DO THAT KIND
28 OF WORK.

0800

1 I DO OVERSEE A QUIT-SMOKING PROGRAM THAT WE RUN,
2 AND IT'S BASED MAINLY ON TELEPHONE COUNSELING.

3 AND SO MY PATIENT INVOLVEMENT, IF YOU WILL, WOULD
4 BE IN OVERSEEING OUR QUIT-SMOKING PROGRAM, AND MAINLY
5 OVERSEEING THE WORK OF OUR COUNSELORS WHO TALK TO PEOPLE WHO
6 ARE TRYING TO QUIT SMOKING.

7 I'M THE PHYSICIAN OF RECORD FOR THAT PROGRAM. I
8 PRESCRIBE THE NICOTINE PATCH OR ZYBAN, FOR EXAMPLE, IF THEY
9 ARE USING THOSE PRODUCTS TO HELP THEM QUIT SMOKING.

10 AND INDIRECTLY, MY IMPACT ON PATIENTS WOULD BE BY
11 WORKING WITH OUR DOCTORS, WORKING WITH OUR CLINICS, WORKING
12 WITH OUR HOSPITALS TO HELP THEM DO A BETTER JOB WHEN THEY
13 SEE PATIENTS, TO IMPROVE THEIR USE OF MAMMOGRAMS AND PAP
14 SMEARS, AND TO DO MORE COUNSELING TO MAKE SURE THAT THEY ARE
15 IMMUNIZING THEIR CHILDREN AND SO ON.

16 Q. SO NOW, AT THE RISK OF EMBARRASSING YOU, HAVE YOU
17 RECEIVED ANY AWARDS OR HONORS FOR YOUR WORK IN TOBACCO?

18 A. I HAVE.

19 Q. AND CAN YOU GIVE US A FEW EXAMPLES.

20 A. I RECEIVED MANY AWARDS WHEN I WAS WITH THE PUBLIC
21 HEALTH SERVICE, VARIOUS MEDALS AND CITATIONS AND SO ON. I
22 RECEIVED TWO FROM THE SURGEON GENERAL, FROM C. EVERETT KOOP,
23 WHICH I SUPPOSE I'M MOST PROUD OF, BECAUSE OF HIM BEING A
24 MENTOR TO ME AND BEING VERY MUCH A HERO TO ME, AS HE IS AND
25 HAS BEEN TO MANY PEOPLE IN THE GENERAL POPULATION.

26 SO HE GAVE ME AN EXEMPLARY SERVICE MEDAL AND THE
27 SURGEON GENERAL CITATION.

28 Q. AND HAVE YOU RECEIVED SOME PRESIDENT'S AWARDS FOR

0801

1 YOUR WORK IN MICHIGAN FROM ORGANIZATIONS THERE?

2 A. YES.

3 Q. WHAT IS THAT?

4 A. I DON'T REMEMBER. I THINK YOU HAVE MY CV.

5 Q. SO I HAVE THE ADVANTAGE OF YOUR CV.

6 A. I DO REMEMBER A FEW OF THE AWARDS FROM THE
7 AMERICAN LUNG ASSOCIATION, FROM OTHERS, BUT I DON'T RECALL
8 ALL THE DETAILS OFF THE TOP OF MY HEAD.

9 Q. OKAY. I WILL LEAVE YOU WITH THAT.

10 HAVE YOU BEEN ON OTHER JOURNALS OR DONE REVIEWING
11 FOR OTHER JOURNALS BESIDES THE ONES THAT YOU TOLD US ABOUT?

12 A. YES.

13 Q. AND CAN YOU TELL US WHAT JOURNALS THOSE ARE.

14 A. I HAVE REVIEWED PAPERS FOR THE NEW ENGLAND
15 JOURNAL OF MEDICINE, THE JOURNAL OF THE AMA, THE AMERICAN
16 PUBLIC HEALTH ASSOCIATION JOURNAL, WHICH IS PROBABLY THE
17 LEADING JOURNAL IN PUBLIC HEALTH, FOR A VARIETY OF OTHER
18 JOURNALS. I THINK THE JOURNAL OF THE NATIONAL CANCER
19 INSTITUTE, RISK ANALYSIS. SOME OTHERS.

20 Q. AND DR. DAVIS, IN ALL THE WORK THAT YOU HAVE
21 DONE, I TAKE IT YOU FORMED SOME OPINIONS ABOUT CIGARETTE
22 SMOKING AND HEALTH?

23 A. YES.

24 Q. GOOD. THAT WAS A VERY BROAD QUESTION.
25 CAN YOU TELL US WHAT DISEASES CIGARETTE SMOKING
26 CAUSES?

27 A. AS I MENTIONED BEFORE, CIGARETTE SMOKING IS THE
28 MOST IMPORTANT PREVENTABLE CAUSE OF DEATH IN OUR SOCIETY,

0802

1 AND IT CAUSES A WIDE VARIETY OF DISEASES. THE LIST IS
2 WIDE -- THE VARIETY OF DISEASES, THE LIST IS QUITE LONG.

3 LUNG CANCER IS THE ONE THAT MOST PEOPLE THINK OF
4 WHEN THEY THINK OF SMOKING, BUT SMOKING CAUSES MANY OTHER
5 TYPES OF CANCER, MOUTH CANCER, THROAT CANCER, LARYNGEAL
6 CANCER.

7 WHEN I REFER TO THROAT CANCER, I MEAN CANCER OF
8 THE PHARYNX, WHICH IS THE BACK PART OF YOUR MOUTH GOING INTO
9 YOUR THROAT (INDICATING). I MEAN THE ESOPHAGUS, WHICH IS
10 YOUR SWALLOWING PIPE. THE PHARYNX IS YOUR VOICE BOX.

11 SO CANCER OF THE LARYNX AND OTHER CANCERS, SUCH
12 AS CANCER OF THE BLADDER AND CANCER OF THE KIDNEYS. THOSE
13 CANCERS ARE INCREASED IN SMOKERS, AND SMOKING IS A CAUSE OF
14 THOSE CANCERS.

15 NEW EVIDENCE, RELATIVELY NEW EVIDENCE, SAY IN THE
16 LAST 10 YEARS, HAS SHOWN THAT SMOKING EVEN CAUSES LEUKEMIA,
17 SOME TYPES OF LEUKEMIA, WHICH IS PROBABLY NOT VERY WELL
18 KNOWN TO THE PUBLIC.

19 HEART DISEASE IS, OF COURSE, VERY IMPORTANT, AND
20 SMOKING IS A MAJOR CAUSE OF HEART DISEASE. A VARIETY OF
21 TYPES OF CARDIOVASCULAR DISEASE, HARDENING OF THE ARTERIES,
22 HEART ATTACK AND STROKE, WHICH IS THE OTHER MAJOR
23 CARDIOVASCULAR DISEASE THAT SMOKING CAUSES THROUGH HARDENING
24 OF THE ARTERIES, CLOTS, AND WHAT WE CALL EMBOLI, WHICH ARE
25 WHEN A CLOT BREAKS OFF IN YOUR ARTERY, IT GOES TO THE BRAIN,
26 FOR EXAMPLE. THAT CAN CAUSE A STROKE.

27 ANOTHER KIND OF CARDIOVASCULAR DISEASE IS WHAT WE
28 REFER TO AS PERIPHERAL VASCULAR DISEASE.

0803

1 Q. WHAT IS THAT?

2 A. THAT IS DISEASE OF THE CIRCULATION IN YOUR LEGS,
3 YOUR EXTREMITIES, LEGS AND ARMS, BUT PRIMARILY YOUR LEGS.

4 AND ONE TYPE OF THAT IS CALLED INTERMITTENT
5 CLAUDICATION, WHERE PEOPLE GET PAIN IN THEIR LEGS WHEN THEY
6 WALK OR DO EXERCISE. BUERGER'S DISEASE IS A SPECIAL TYPE OF
7 CIRCULATORY DISEASE IN THE LEGS, WHICH IS CAUSED BY SMOKING.

8 SO SMOKING CAUSES CARDIOVASCULAR PROBLEMS IN THE
9 HEART, THE BRAIN AND THE EXTREMITIES, AS WELL AS OTHERS.

10 SMOKING CAUSES LUNG DISEASE. EMPHYSEMA AND
11 CHRONIC BRONCHITIS ARE MOST WELL-KNOWN AS BEING CAUSED BY
12 CIGARETTE SMOKING. IT EXACERBATES ASTHMA. SO PEOPLE WHO
13 SMOKE AND WHO HAVE ASTHMA ARE LIKELY TO HAVE MUCH WORSE
14 ASTHMA BECAUSE OF THEIR SMOKING.

15 IT INCREASES THE RISK OF GETTING PNEUMONIA AND
16 INFLUENZA. IF PEOPLE SMOKE, THEY HAVE A HIGHER RISK OF
17 THOSE DISEASES, BECAUSE THEY DON'T GET RID OF THE BUGS IN
18 THEIR SYSTEM.

19 WHEN PEOPLE BREATHE IN AN INFLUENZA VIRUS,
20 PNEUMONIA BACTERIUM, THEIR LUNGS ARE NOT ABLE TO SWEEP THOSE
21 MICROORGANISMS OUT OF THEIR LUNGS AS WELL BECAUSE OF THEIR
22 SMOKING. SMOKE PARALYZES THE ABILITY OF THEIR BREATHING
23 TUBES TO GET THAT STUFF OUT OF THEIR -- OUT OF THEIR LUNGS,
24 WHICH IS WHY THEY'RE MORE LIKELY TO GET AN INFLUENZA OR
25 PNEUMONIA KIND OF INFECTION.

26 THERE ARE OTHER DISEASES THAT ARE ALSO LINKED TO
27 SMOKING, AND ULCERS ARE ONE OF THOSE. AGAIN, MOST PEOPLE
28 ARE PROBABLY NOT AWARE THAT SMOKING IS A CAUSE OF ULCER

0804

1 DISEASE.
2 MS. CHABER: YOUR HONOR, DO YOU WANT TO STOP FOR
3 LUNCH?
4 THE COURT: YES. OKAY, JURORS. LET'S TAKE A
5 LUNCH RECESS UNTIL 1:30.
6 PLEASE CONTINUE TO FOLLOW THE ADMONITION. AS YOU
7 KNOW, IT'S CRITICAL THAT YOU DO SO.
8 HAVE A GOOD LUNCH. WE'LL SEE YOU AT 1:30.
9 (LUNCH RECESS TAKEN AT 12:00 NOON)

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28

0805

1 AFTERNOON SESSION 1:45 P.M.
2 WEDNESDAY, JANUARY 19, 2000
3 THE COURT: WE ARE BACK ON THE RECORD.
4 YES, MR. BROWN.
5 MR. BROWN: FOR THE RECORD, YOUR HONOR, LET ME
6 IDENTIFY PLAINTIFFS' EXHIBITS FOR IDENTIFICATION 1800 AND
7 1801. THEY ARE THE TWO PHOTOGRAPHS THAT WERE SHOWN TO THE
8 JURY YESTERDAY.
9 (DOCUMENTS MORE PARTICULARLY
10 LISTED IN THE INDEX MARKED
11 FOR IDENTIFICATION PLAINTIFFS'
12 EXHIBIT #S 1800 AND 1801)
13 THE COURT: NOW, LET ME ASK YOU A PROCEDURAL
14 QUESTION: THE BINDERS THAT I HAVE UP HERE WITH THE NUMBERS
15 ON THEM --
16 MS. CHABER: YOU DON'T HAVE AN 1800, YOUR HONOR,
17 OR ANYTHING CLOSE TO IT. WE TOOK A BIG GAP.
18 THE COURT: IF YOU TOOK A BIG GAP, COULD YOU
19 PROVIDE ME WITH A COPY OF AN 1800 AND 1801 AND A BINDER WITH
20 TABS IN IT?
21 MS. CHABER: YES.
22 THE COURT: DO YOU WANT TO DO THAT AT THE END OF
23 THE DAY?
24 MR. BROWN: YES.
25 MS. CHABER: IT'S PHOTOGRAPHS. I DIDN'T KNOW IF
26 THE COURT WANTED PHOTOCOPIES OF PHOTOGRAPHS.
27 THE COURT: I WANT ALL OF THE EXHIBITS, NO
28 MATTER WHAT THEY ARE.

0806

1 MS. CHABER: EVEN PHOTOGRAPHS SUCH AS THAT?
2 THE COURT: YES, ALTHOUGH I HAD A CASE RECENTLY
3 WHERE ONE OF THE EXHIBITS WAS A LARGE BAG OF MONEY.
4 AND WHEN THE LAWYER HAD IDENTIFIED AND MARKED IT

5 FOR IDENTIFICATION, THE LAWYERS SAID TO ME, "WE DON'T HAVE A
6 COPY FOR YOU."

7 OKAY. WHY DON'T YOU SUPPLY THAT OVER THE COURSE
8 OF THE EVENING.

9 MS. CHABER: AND FOR MY NEXT EXHIBIT WILL BE A
10 LARGE BAG OF MONEY? NO.

11
12 DIRECT EXAMINATION (CONTINUED)

13 BY MS. CHABER: Q. DR. DAVIS, BEFORE THE LUNCH
14 BREAK, WE WERE TALKING ABOUT THE VARIOUS SURGEON GENERAL'S
15 REPORTS. AND I BELIEVE THE FIRST ONE THAT YOU WERE INVOLVED
16 IN WAS THE '88?

17 A. CORRECT.

18 Q. OKAY. I JUST WANT TO MAKE SURE, BECAUSE WE KEPT
19 SKIPPING OVER NUMBERS.

20 AND THAT IS THE NICOTINE ADDICTION SURGEON
21 GENERAL'S REPORT?

22 A. CORRECT.

23 Q. AND I WANTED TO ASK YOU SOME QUESTIONS ABOUT IT.
24 DO YOU KNOW OF ANY ATTEMPT BY YOURSELF OR OTHERS
25 IN YOUR OFFICE TO CHANGE THE DEFINITION OF "ADDICTION" FOR
26 THE REASON OF FEDERAL REGULATION?

27 A. ABSOLUTELY NOT.

28 Q. DO YOU KNOW OF ANY PURPOSE OR AGENDA BY YOURSELF

0807
1 OR ANYONE ELSE IN THE OFFICE WHO WAS WORKING ON THE SURGEON
2 GENERAL'S REPORT TO CHANGE THE DEFINITION OF "ADDICTION" TO
3 BE AN EMOTIONAL PLEA TO JURIES IN CASES LIKE THIS?

4 A. ABSOLUTELY NOT.

5 Q. IN 1988, WHEN YOU WERE WORKING ON THAT REPORT,
6 WERE YOU INVOLVED IN ANY LAWSUITS SUCH AS THIS, INVOLVING
7 INDIVIDUALS?

8 A. NO.

9 Q. WHY WAS THE 1988 SURGEON GENERAL'S REPORT PUT
10 TOGETHER WITH A DEFINITION OF NICOTINE ADDICTION?

11 A. THE DEFINITION OF NICOTINE ADDICTION OR ADDICTING
12 DRUGS IN GENERAL THAT WE USED FOR THAT REPORT REFLECTED
13 CURRENT THINKING IN THE MEDICAL AND SCIENTIFIC COMMUNITIES
14 ABOUT WHAT IT MEANS TO CALL A DRUG ADDICTING.

15 WE DIDN'T CHANGE DEFINITIONS FOR THE PURPOSE OF
16 THIS REPORT. WE ADOPTED A DEFINITION CONSISTENT WITH THE
17 SCIENTIFIC THINKING AT THE TIME, SO THAT WE COULD EXAMINE
18 ALL OF THE EVIDENCE THAT DETERMINES NICOTINE AS AN ADDICTING
19 DRUG, BASED ON SCIENTIFIC KNOWLEDGE AND BASED ON THE
20 DEFINITION THAT MAKES SENSE WITH OUR CURRENT UNDERSTANDING
21 OF ADDICTING DRUGS, CURRENT AS OF THE LATE 1980S.

22 Q. AND JUST WHEN DID THAT CONCEPT COME ABOUT OF A
23 DIFFERENT UNDERSTANDING ABOUT NICOTINE ADDICTION THAN, SAY,
24 WHAT WAS SAID IN THE 1964 REPORT, THAT IT WAS MORE LIKE A
25 HABIT THAN AN ADDICTION?

26 A. IN FACT, THIS REPORT (INDICATING), THE 1988
27 REPORT, EXPLAINS THAT. IN 1964, LATER THAT YEAR, AFTER THAT
28 FIRST SURGEON GENERAL'S REPORT CAME OUT, THE WORLD HEALTH

0808
1 ORGANIZATION ADOPTED A DIFFERENT DEFINITION OF ADDICTING
2 DRUGS TO GET AWAY FROM THIS ISSUE OF A HABIT VERSUS AN
3 ADDICTION.

4 THE WHO CHANGED ITS DEFINITION LATER IN 1964 FOR
5 REASONS THAT ARE EXPLAINED IN THIS REPORT BECAUSE IT FELT
6 THAT THE PREVIOUS TERMINOLOGY, HABIT VERSUS ADDICTION, WAS
7 NOT APPROPRIATE.

8 Q. AND WHY WASN'T IT APPROPRIATE?

9 A. THERE ARE A FEW SENTENCES IN THE REPORT THAT

10 EXPLAIN THAT.
11 WOULD IT BE APPROPRIATE FOR ME TO READ FROM
12 THOSE?
13 Q. WELL, WE CAN CERTAINLY TRY.
14 MR. FURR: YOUR HONOR, I OBJECT TO THE READING
15 OF THE REPORT.
16 THE COURT: ON THE GROUNDS OF?
17 MR. FURR: IT'S HEARSAY.
18 THE COURT: SUSTAINED.
19 MS. CHABER: Q. LET ME ASK YOU A QUESTION, DR.
20 DAVIS.
21 IS THIS A REPORT THAT'S PREPARED IN THE ORDINARY
22 COURSE OF THE BUSINESS OF THE GOVERNMENT?
23 A. YES. IN FACT, THE REPORT IS TRANSMITTED TO
24 CONGRESS AS REQUIRED BY FEDERAL LAW. FEDERAL LEGISLATION
25 REQUIRES THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO
26 REPORT ANNUALLY TO THE CONGRESS ON THE HEALTH CONSEQUENCES
27 OF SMOKING. AND THE DEPARTMENT DOES SO BY TRANSMITTING THE
28 SURGEON GENERAL'S REPORT ON SMOKING TO CONGRESS.
0809
1 Q. AND WERE YOU A PUBLIC EMPLOYEE AT THE TIME THAT
2 YOU WERE IN CHARGE OF THIS?
3 A. YES.
4 Q. AND WAS THIS REPORT MADE WITHIN THE SCOPE OF YOUR
5 DUTIES AS A PUBLIC EMPLOYEE?
6 A. YES.
7 Q. AND I THINK YOU DESCRIBED THE PROCESS AND HOW IT
8 TOOK PLACE OVER A PERIOD OF TIME.
9 WAS THE REPORT PREPARED AT OR NEAR THE TIME FRAME
10 OF WHEN THE WORK WAS BEING DONE?
11 A. YES.
12 Q. AND HAS THIS REPORT BEEN RELIED ON BY THE
13 GOVERNMENT OF THE UNITED STATES IN FORMING TOBACCO POLICY?
14 A. YES. IN FACT, THE FOOD AND DRUG ADMINISTRATION
15 RELIED HEAVILY ON IT WHEN IT PROMULGATED POLICIES ON TOBACCO
16 SALES AND MARKETING JUST A FEW YEARS AGO.
17 MS. CHABER: YOUR HONOR, I WOULD REOFFER THIS
18 UNDER EVIDENCE CODE SECTION 1280 AND ALSO 1270.
19 THE COURT: YOU HAVEN'T OFFERED IT YET AT ALL.
20 SO YOU'RE OFFERING IT NOW?
21 MS. CHABER: EXCUSE ME?
22 THE COURT: I SAY, YOU HAVEN'T OFFERED IT YET AT
23 ALL.
24 YOU'RE SAYING, "I'M REOFFERING IT." IT HASN'T
25 BEEN OFFERED.
26 MS. CHABER: WELL, I HAD ASKED HIM TO READ FROM
27 IT.
28 THE COURT: OH, OKAY. LET ME SEE IF THERE'S AN
0810
1 OBJECTION.
2 WHAT EXHIBIT NUMBER IS IT? IS THIS AN EXHIBIT
3 THAT HAS BEEN MARKED FOR IDENTIFICATION?
4 MS. CHABER: NO, BUT THIS IS PART OF THIS WHOLE
5 THING WE DISCUSSED IN CHAMBERS.
6 THE COURT: I HAVE TO HAVE A DOCUMENT THAT HAS
7 BEEN MARKED FOR IDENTIFICATION, AND I HAVE TO HAVE THE
8 ABILITY TO LOOK AT IT. WITH ALL OF THESE BINDERS OF
9 DOCUMENTS, WE DON'T HAVE THAT INCLUDED?
10 MS. CHABER: NO, SIR. IT'S A REPORT. WE'LL
11 MARK IT FOR IDENTIFICATION AS NEXT IN ORDER.
12 THE CLERK: 1802.
13 MS. CHABER: 1802.
14 (DOCUMENT MORE PARTICULARLY

15 LISTED IN THE INDEX MARKED
16 FOR IDENTIFICATION PLAINTIFFS'
17 EXHIBIT # 1802)
18 MS. CHABER: AND, DR. DAVIS, YOU HAVE A COPY
19 YOURSELF UP THERE.
20 MAY I HAND THIS TO YOU, YOUR HONOR.
21 THE COURT: YOU NEED TO LAY A BRIEF FOUNDATION
22 AS TO THE RELATIONSHIP BETWEEN 1802 AND HIS PREVIOUS
23 TESTIMONY.
24 MS. CHABER: Q. DR. DAVIS -- AND YOUR HONOR, I
25 BELIEVE THAT THE COURT PERMITS THE APPROACHING OF
26 WITNESSES?
27 THE COURT: YES, ALWAYS.
28 MS. CHABER: Q. DOCTOR, IS WHAT'S BEEN MARKED
0811
1 AS PLAINTIFFS' EXHIBIT 1802 THE SAME VOLUME OF THE SURGEON
2 GENERAL'S REPORT THAT YOU HAVE BEEN DISCUSSING?
3 A. YES.
4 Q. AND THAT YOU HAVE DESCRIBED HOW IT WAS PREPARED?
5 A. YES.
6 Q. AND WHO PREPARED IT?
7 A. YES.
8 Q. AND UNDER WHAT CIRCUMSTANCES IT WAS PREPARED?
9 A. YES.
10 MS. CHABER: I WOULD OFFER THIS, YOUR HONOR.
11 THE COURT: ANY OBJECTION?
12 MR. FURR: YES, YOUR HONOR. I OBJECT THAT IT'S
13 HEARSAY, THAT IT DOES NOT SATISFY EXCEPTIONS IN 1271 OR
14 1280, AND THAT THERE ARE MULTIPLE LEVELS OF HEARSAY WITHIN
15 HEARSAY IN THE DOCUMENT.
16 THE COURT: SUSTAINED.
17 MS. CHABER: COULD I ASK THE COURT, FOR THE
18 RECORD, UNDER WHAT GROUND? THERE WERE SEVERAL OBJECTIONS.
19 THE COURT: YES. IT'S HEARSAY AND DOESN'T MEET
20 THE REQUIREMENTS OF THE SECTIONS THAT YOU HAVE CITED.
21 BUT I DON'T WANT TO HAVE THESE DISCUSSIONS IN
22 GENERAL IN FRONT OF THE JURY. I WILL TELL YOU THROUGHOUT
23 THE COURSE OF THE TRIAL THE LEGAL GROUNDS ON WHICH I HAVE
24 RULED. THAT'S WHAT YOU ASKED.
25 MS. CHABER: HE HAD MADE MULTIPLE OBJECTIONS. I
26 WANTED TO KNOW WHICH ONE OF THEM.
27 THE COURT: WHAT I UNDERSTOOD HIS OBJECTION
28 PRIMARILY TO BE WAS THAT IT'S HEARSAY AND DOESN'T MEET
0812
1 REQUIREMENTS OF THE SECTIONS THAT YOU CITED.
2 I'M SUSTAINING ON THOSE GROUNDS.
3 MS. CHABER: Q. DR. DAVIS, WITHOUT READING
4 FROM THE 1988 SURGEON GENERAL'S REPORT, CAN YOU TELL US WHAT
5 YOU WERE ABOUT TO EXPLAIN?
6 A. FIRST OF ALL, BACK IN 1964, BEFORE THIS
7 DEFINITION WAS CHANGED BY THE WORLD HEALTH ORGANIZATION, IT
8 SHOULD BE NOTED THAT NOT ONLY WAS SMOKING CALLED A HABIT,
9 BUT THE SAME WAS THE CASE FOR COCAINE AND AMPHETAMINES.
10 Q. THE USE OF COCAINE WAS CALLED A HABIT?
11 A. CORRECT, UNDER THAT EARLIER DEFINITION.
12 Q. AND THE USE OF AMPHETAMINES WAS CALLED A HABIT
13 UNDER THAT DEFINITION?
14 A. CORRECT. AND HERE ARE A FEW OF THE KEY REASONS.
15 ONE POINT THAT WAS MADE --
16 MS. MASON: OBJECTION, YOUR HONOR. I DON'T
17 BELIEVE THERE IS A QUESTION PENDING.
18 THE COURT: OKAY.
19 MS. MASON: HE ANSWERED A PREVIOUS QUESTION,

20 YOUR HONOR.
21 THE COURT: THAT'S TRUE. YOU'VE GOT TO WAIT FOR
22 THE NEXT QUESTION.
23 MS. CHABER: Q. WHAT WERE THE REASONS, DOCTOR?
24 A. THE REASONS WERE AS FOLLOWS. IT'S HARD TO ANSWER
25 WITH A YES-OR-NO ANSWER. IT'S A COMPLICATED ISSUE. SO I'LL
26 TRY AND BE CONCISE.

27 UNDER THE PREVIOUS DEFINITION THAT WAS USED IN
28 THE 1964 SURGEON GENERAL'S REPORT, BEFORE THE WORLD HEALTH

0813

1 ORGANIZATION CHANGED ITS DEFINITION LATER THAT YEAR, A
2 HABIT-FORMING DRUG AS OPPOSED TO AN ADDICTING DRUG, A
3 HABIT-FORMING DRUG WAS CONSIDERED ONE THAT WAS NOT
4 INTOXICATING. AND THAT WAS A KEY DISTINCTION, WHEREAS
5 SO-CALLED ADDICTING DRUGS WERE FELT TO BE INTOXICATING.

6 ANOTHER KEY ISSUE WAS WHETHER THERE WAS SOCIAL
7 DAMAGE FROM A DRUG. FOR EXAMPLE, DO PEOPLE COMMIT CRIME OR
8 STEAL, BREAK INTO STORES, ROB BANKS IN ORDER TO GET MONEY TO
9 BUY DRUGS? AND IT WAS FELT THAT SOCIAL DAMAGE WAS A
10 REQUIREMENT FOR A DRUG TO BE ADDICTING.

11 SO LSD, FOR EXAMPLE, DRUGS THAT CAUSED ACUTE
12 INTOXICATION, DRUGS THAT MOTIVATED PEOPLE TO COMMIT CRIME,
13 THOSE KIND OF DRUGS WOULD HAVE BEEN CONSIDERED UNDER THE
14 PREVIOUS DEFINITION MORE ADDICTING DRUGS. BUT IF THEY
15 DIDN'T CAUSE SOCIAL DAMAGE AND IF THEY WERE NOT INTOXICATING
16 ACUTELY, THAT MEANS RIGHT AWAY, LIKE LSD MIGHT, THEN THEY
17 WERE CONSIDERED HABIT-FORMING.

18 BUT THEN IT WAS DECIDED THAT THAT DOESN'T MAKE A
19 WHOLE LOT OF SENSE, BECAUSE DRUGS CAN BE VERY ADDICTING,
20 EVEN IF THEY DON'T CAUSE YOU TO ROB A BANK TO GET MONEY TO
21 BUY A DRUG. EVEN IF THEY DON'T CAUSE ACUTE INTOXICATION,
22 LIKE HALLUCINATIONS THAT WE THINK ABOUT WITH LSD.

23 YOU DON'T HAVE TO HAVE HALLUCINATIONS OR YOU
24 DON'T HAVE TO ENCOURAGE CRIME IN ORDER FOR A DRUG TO BE
25 ADDICTING.

26 SO THAT'S WHY THAT DISTINCTION BETWEEN ADDICTING
27 AND HABIT-FORMING DRUGS WAS DROPPED IN 1964.

28 Q. IS THERE A CERTAIN AMOUNT OF STIGMA THAT COMES

0814

1 ALONG WITH USING THE WORD "ADDICTION"?

2 A. THERE IS. AND I THINK THERE IS PERHAPS SOME
3 MISUNDERSTANDING ON THE PART OF SOME PEOPLE THAT ADDICTION
4 MEANS INTOXICATION, ACUTE INTOXICATION, HALLUCINATIONS, THAT
5 KIND OF THING,.

6 BUT IN NO WAY DO YOU HAVE TO HAVE, AS I SAID
7 BEFORE, AN INTOXICATION, ACUTE INTOXICATION FOR A DRUG TO BE
8 ADDICTING.

9 Q. AND IN 1964, WHEN THE SURGEON GENERAL CALLED
10 CIGARETTE SMOKING A HABIT, WERE THE MAJORITY OF AMERICANS
11 SMOKING?

12 A. OVERALL, THE PERCENTAGE OF ADULTS WHO WERE
13 SMOKING BACK THEN WAS ABOUT 40 PERCENT.

14 BUT THE MAJORITY OF MEN WHO WERE SMOKING WAS VERY
15 HIGH, LIKE 70 PERCENT, 60, 70 PERCENT.

16 Q. AND THE WORLD HEALTH ORGANIZATION'S CHANGE OF THE
17 DEFINITION, IS THAT CONSISTENT WITH THE CHANGE THAT WAS --
18 OR NOT THE CHANGE, BUT RATHER WHAT IS DESCRIBED IN THE 1988
19 REPORT?

20 A. YES.

21 Q. AND HAS THERE BEEN NO MENTION IN ANY OF THE
22 SURGEON GENERAL REPORTS BETWEEN 1964 AND 1988 OF SMOKING
23 BEING ADDICTIVE-TYPE BEHAVIOR?

24 A. THERE HAS BEEN MENTION IN PREVIOUS REPORTS WELL

25 BEFORE THE 1988 REPORT (INDICATING). IN FACT, THE 1979
26 REPORT, WHICH WAS THE 15TH ANNIVERSARY REPORT, TALKS ABOUT
27 THE DRUG EFFECTS OF NICOTINE, THE PHARMACOLOGIC EFFECTS OF
28 NICOTINE, THE DEPENDENCY-PRODUCING EFFECTS OF NICOTINE. IT

0815

1 MAY NOT HAVE USED THE TERM "ADDICTION." I DON'T BELIEVE IT
2 DID USE THE TERM OF "ADDICTION."

3 IT TALKED ABOUT DEPENDENCE-PRODUCING OR
4 PHARMACOLOGIC EFFECTS OF NICOTINE.

5 Q. MAYBE WE SHOULD CLEAR THAT UP.

6 WHAT DO YOU MEAN BY "PHARMACOLOGIC EFFECTS"?

7 A. WELL, PHARMACOLOGY IS THE STUDY OF DRUGS. I'M
8 TALKING ABOUT MEDICATIONS NOW. I'M NOT TALKING ABOUT
9 ILLEGAL DRUGS, ILLICIT DRUGS.

10 SO PHARMACOLOGY IS THE STUDY OF DRUGS.
11 PHARMACOLOGIC EFFECTS OF DRUGS WOULD BE THE EFFECTS ON THE
12 BODY, WHAT A DRUG MIGHT DO TO YOUR HEART RATE, TO YOUR BLOOD
13 PRESSURE, TO YOUR VARIOUS ORGANS, TO YOUR BRAIN. THOSE
14 WOULD BE PHARMACOLOGIC EFFECTS. WHAT IT DOES TO HORMONES.
15 IT MIGHT INCREASE OR DECREASE THE LEVEL OF HORMONES IN YOUR
16 BODY.

17 THAT'S ONE OF THE HALLMARKS OF AN ADDICTING DRUG,
18 THAT IT HAS PHARMACOLOGIC EFFECTS. IT AFFECTS THE CHEMISTRY
19 OF THE BRAIN OR THE CENTRAL NERVOUS SYSTEM.

20 Q. AND DOES NICOTINE, AS CONTAINED IN CIGARETTES,
21 HAVE A PHARMACOLOGICAL EFFECT SUCH THAT IT AFFECTS THE
22 BRAIN?

23 A. YES, IT DOES AFFECT THE CHEMISTRY OF THE BRAIN
24 AND THE CENTRAL NERVOUS SYSTEM.

25 Q. AND IT DOES AFFECT OTHER THE PARTS OF THE BODY OR
26 THE WAY -- THE CHEMISTRY OF THE BODY?

27 A. ABSOLUTELY. IT HAS MANY EFFECTS ON THE BODY.
28 AND WHEN PEOPLE BECOME ACCUSTOMED TO THOSE EFFECTS AND

0816

1 THEY'RE DEPRIVED OF NICOTINE, IF THEY TRY TO QUIT SMOKING,
2 THEY GO THROUGH WITHDRAWAL. THEY HAVE MANY WITHDRAWAL SIGNS
3 AND SYMPTOMS THAT ARE OFTEN THE FLIP SIDE OF THE EFFECTS OF
4 NICOTINE.

5 Q. NOW, WHEN YOU TALK ABOUT WITHDRAWAL, DOES
6 WITHDRAWAL HAVE TO BE -- IS IT CONSIDERED NECESSARY THAT
7 SOMEBODY GO INTO CONVULSIONS OR HAVE SOME KIND OF AN ACUTE
8 WITHDRAWAL EFFECT IN ORDER TO CONSIDER THAT WITHDRAWAL FROM
9 AN ADDICTIVE SUBSTANCE?

10 A. NO. THERE IS A WIDE DIVERSITY OF WITHDRAWAL
11 SIGNS. PEOPLE MIGHT --WHEN THEY THINK OF WITHDRAWAL, THEY
12 MIGHT THINK OF WITHDRAWAL FROM ALCOHOL, WHEN AN ALCOHOLIC
13 WHO DOESN'T GET ALCOHOL FOR A CERTAIN PERIOD OF TIME, THEY
14 COULD GET THE SHAKES, WHAT WE CALL DELIRIUM TREMENS. THEY
15 MIGHT EVEN GO INTO CONVULSIONS AFTER THEY'VE BEEN DEPRIVED
16 OF ALCOHOL FOR A CERTAIN OF PERIOD OF TIME, IN FACT, THAT
17 CAN BE LIFE-THREATENING.

18 YOU DON'T HAVE TO SEE AN EXTREME REACTION LIKE
19 THAT FOR WITHDRAWAL TO TAKE PLACE FOR OTHER DRUGS.

20 FOR NICOTINE, FOR EXAMPLE, YOU HAVE FEELINGS
21 OF -- FEELINGS OR SYMPTOMS OF NICOTINE WITHDRAWAL LIKE
22 ANXIETY, DIFFICULTY CONCENTRATING, DIFFICULTY SLEEPING,
23 CHANGES IN YOUR DIETARY HABIT, HEADACHE, STOMACH UPSET.
24 THOSE ARE ALL SYMPTOMS OF NICOTINE WITHDRAWAL. IRRITABILITY
25 IS ANOTHER ONE.

26 AND THEN WE COULD TALK ABOUT NICOTINE SIGNS, AND
27 AGAIN, I DON'T WANT TO USE SCIENTIFIC TERMS WITHOUT DEFINING
28 THEM. A SYMPTOM WOULD GENERALLY BE WHAT THE PATIENT OR

0817

1 PERSON DESCRIBES, USING THEIR OWN WORDS. THAT WOULD BE A
2 SYMPTOM, LIKE, "I FEEL IRRITABLE. I HAVE A HEADACHE."
3 A SIGN IS SOMETHING THAT WE COULD MEASURE IN THE
4 DOCTOR'S OFFICE OR IN THE HOSPITAL, SUCH AS A CHANGE IN
5 HEART RATE, A CHANGE IN THEIR BLOOD PRESSURE, A CHANGE IN
6 THEIR BRAIN-WAVE ACTIVITY, IF YOU HOOK UP SOME LEADS TO
7 THEIR HEAD, WHICH WE CALL AN ELECTROENCEPHALOGRAM OR EEG.
8 SO I MENTIONED ALREADY THE SYMPTOMS OF NICOTINE
9 WITHDRAWAL, WHAT PEOPLE WOULD REPORT IF THEY TRY TO QUIT.
10 THERE ARE ALSO SIGNS OF NICOTINE WITHDRAWAL. AND
11 PRINCIPAL AMONG THOSE WOULD BE A CHANGE IN HEART RATE OR
12 BLOOD PRESSURE, AND A CHANGE IN BRAIN-WAVE ACTIVITY.
13 WHEN PEOPLE SMOKE, THEIR HEART RATE GOES UP,
14 THEIR BLOOD PRESSURE GOES UP. AND WHEN THEY QUIT, THE
15 REVERSE EFFECTS HAPPEN. THE BLOOD PRESSURE GOES DOWN AND
16 THE HEART RATE GOES DOWN.
17 THOSE ARE SIGNS OF NICOTINE WITHDRAWAL.
18 Q. LET'S TALK A LITTLE BIT ABOUT QUITTING.
19 YOU WERE INVOLVED ALSO WITH THE SURGEON GENERAL'S
20 REPORT ON THE HEALTH BENEFITS OF SMOKING CESSATION?
21 A. CORRECT.
22 Q. AND THAT'S SOMETHING -- AS I UNDERSTOOD YOU THIS
23 MORNING TO BE DESCRIBING, THAT'S SOMETHING YOU WERE DEEPLY
24 INVOLVED IN AND HAVE BEEN FOR A LONG TIME?
25 A. YES.
26 Q. IF I WERE TO SAY TO YOU THAT 50 MILLION AMERICANS
27 QUIT EVERY YEAR, IS THAT A FAIR STATEMENT?
28 A. WELL, IT'S ACTUALLY 50 MILLION AMERICANS HAVE

0818

1 QUIT SMOKING, NOT IN ANY GIVEN YEAR. IT WOULD BE MORE LIKE
2 A MILLION AND A HALF QUIT IN A PARTICULAR YEAR.
3 BUT IF YOU DO A SURVEY OF ADULTS IN THE UNITED
4 STATES AND YOU ASK THEM ABOUT THEIR SMOKING STATUS, ABOUT 45
5 OR 50 MILLION AMERICANS WOULD BE CURRENT CIGARETTE SMOKERS
6 IN SUCH A SURVEY.
7 OBVIOUSLY, YOU DO A SURVEY OF 1,000 OR 2,000
8 PEOPLE OR MAYBE 10,000 PEOPLE. THEN WHEN YOU EXTRAPOLATE
9 THOSE RESULTS FOR THE WHOLE POPULATION, YOU WOULD FIND ABOUT
10 45 OR 50 MILLION AMERICANS ARE CURRENT SMOKERS.
11 AND ABOUT 45 MILLION AMERICANS WOULD SAY THAT
12 THEY ARE EX-SMOKERS. BUT IF YOU LOOK AT THE NUMBER WHO QUIT
13 IN ANY GIVEN YEAR, THAT WOULD BE ABOUT A MILLION, A MILLION
14 OR A MILLION AND A HALF.
15 Q. DOES THE FACT THAT SOME PEOPLE QUIT SMOKING MEAN
16 THAT SMOKING IS NOT AN ADDICTION?
17 A. ABSOLUTELY NOT.
18 Q. AND WHY NOT?
19 A. JUST BECAUSE A DRUG IS ADDICTING DOESN'T MEAN
20 THAT YOU CAN'T QUIT. WITH ALL THE DRUGS OF ADDICTION, WE
21 SEE EVIDENCE THAT PEOPLE CAN QUIT. COCAINE, HEROIN.
22 ALCOHOLICS; WE HAVE PEOPLE WHO HAVE QUIT ALCOHOL.
23 MANY SERVICEMEN WHO WENT OVER TO VIETNAM BECAME
24 ADDICTED TO HEROIN AND CAME BACK TO THE UNITED STATES, AND
25 ALMOST ALL OF THEM GAVE UP HEROIN, MOST WITHOUT ANY FORMAL
26 TREATMENT.
27 NOW, I DON'T THINK WE WOULD SAY THAT HEROIN IS
28 NOT ADDICTING JUST BECAUSE SOME PEOPLE, A LOT OF PEOPLE GAVE

0819

1 UP HEROIN WITHOUT FORMAL TREATMENT.
2 Q. HAVE THERE BEEN STUDIES OR LOOKS AT SUCCESS RATES
3 OF PEOPLE QUITTING SMOKING? "I'VE QUIT FOR AN HOUR. I'VE
4 QUIT FOR A DAY. I'VE QUIT FOR A WEEK. I'VE QUIT FOR A
5 MONTH," THAT KIND OF THING?

6 A. YES.
7 Q. CAN YOU, JUST IN GENERAL, DESCRIBE WHAT KIND OF
8 STUDIES HAVE BEEN DONE?
9 A. TYPICALLY, STUDIES WOULD LOOK AT THE SUCCESS IN
10 QUITTING SMOKING, LOOKING AT THE EFFECTIVENESS, FOR EXAMPLE,
11 OF THE NICOTINE GUM IN PEOPLE QUITTING SMOKING, OR THE
12 NICOTINE PATCH, SOMETIMES COMPARED AGAINST WHAT WE CALL A
13 PLACEBO.
14 PEOPLE THINK OF A PLACEBO AS A SUGAR PILL. SO
15 THEY MIGHT GET GUM WITH NICOTINE IN IT AND THEN YOU MIGHT
16 HAVE A CONTROL GROUP THAT HAS GUM WITHOUT ANY NICOTINE IN
17 IT. THAT LOOKS THE SAME, TASTES THE SAME, CHEWS THE SAME,
18 BUT IT JUST DOESN'T HAVE NICOTINE IN IT.
19 AND SO WE COULD COMPARE THE QUITTING RATE IN THE
20 GROUP THAT GETS THE NICOTINE GUM VERSUS THE GROUP THAT GETS
21 THE PLACEBO GUM.
22 WE COULD ALSO COMPARE PEOPLE WHO QUIT SMOKING TO
23 THE NORMAL QUITTING RATE IN THE POPULATION, MOST OF WHOM
24 WOULD NOT HAVE ANY FORMAL TREATMENT.
25 Q. LET ME JUST STOP YOU THERE FOR A MINUTE.
26 WHEN YOU SAY MOST WOULDN'T HAVE HAD FORMAL
27 TREATMENT, DOES THAT MEAN THAT IT'S EASY TO QUIT SMOKING?
28 A. NO. NO. ABSOLUTELY NOT. MOST PEOPLE WHO SMOKE
0820
1 WANT TO QUIT. 70, 80 PERCENT OF THEM WANT TO QUIT AND ABOUT
2 A THIRD OF THEM MAKE A SERIOUS ATTEMPT TO QUIT IN ANY GIVEN
3 YEAR, AND ONLY ABOUT THREE OR FOUR PERCENT ARE ABLE TO STAY
4 OFF PERMANENTLY.
5 SO DESPITE THE FACT THAT THREE-FOURTHS OF SMOKERS
6 WANT TO QUIT, ONE-THIRD MAKE A SERIOUS ATTEMPT TO QUIT, ONLY
7 A FEW PERCENT OF THE SMOKERS ARE ABLE TO ACTUALLY QUIT.
8 IT'S VERY DIFFICULT TO QUIT.
9 Q. AND IS THAT JUST SOMETHING THAT SCIENTISTS IN
10 YOUR FIELD ATTRIBUTE TO LACK OF WILLPOWER ON THE PART OF
11 PEOPLE?
12 A. ABSOLUTELY NOT.
13 Q. WHY NOT?
14 A. IT TAKES MUCH MORE THAN JUST WILLPOWER TO QUIT AN
15 ADDICTING DRUG. YOU HAVE TO NOT ONLY BE MOTIVATED TO QUIT,
16 BUT YOU HAVE TO HAVE SUPPORT TO QUIT. YOU HAVE TO HAVE --
17 YOU HAVE TO HAVE MEDICATION. FOR MANY PEOPLE, YOU HAVE TO
18 HAVE THE SKILLS IN QUITTING. YOU HAVE TO HAVE WAYS IN WHICH
19 YOU CAN CHANGE YOUR LIFE TO REPLACE WHAT SMOKING DID FOR
20 YOU.
21 FOR SOME PEOPLE, IT MIGHT BE HAVING SOMETHING IN
22 THEIR HANDS ALL THE TIME. FOR SOME PEOPLE, IT MIGHT BE AN
23 ORAL FIXATION, HAVING SOMETHING IN THEIR MOUTH. FOR SOME
24 PEOPLE, ALWAYS HAVING SOMETHING TO DO AFTER THEIR MEAL IS
25 OVER.
26 SO PEOPLE SMOKE FOR MANY DIFFERENT REASONS. FOR
27 SOME PEOPLE, A CIGARETTE IS THEIR BEST FRIEND. FOR SOME
28 PEOPLE, A CIGARETTE IS THEIR LOVER.
0821
1 YOU HAVE TO FIGURE OUT WHY A PERSON SMOKES AND
2 SOMEHOW TRY AND FIGURE OUT HOW TO REPLACE THAT CIGARETTE
3 IN ORDER FOR THEM TO BE ABLE TO GIVE IT UP.
4 IF IT WERE EASY TO QUIT, WE'D HAVE 10 MILLION
5 SMOKERS IN THE UNITED STATES INSTEAD OF 50 MILLION.
6 Q. NOW, DO SOME OF THE STATISTICS ON QUITTING
7 SMOKING REFLECT PEOPLE WHO QUIT SMOKING BECAUSE OF SOME
8 PHYSICAL OR LIFE-THREATENING EVENT IN THEIR LIVES, SUCH AS A
9 HEART ATTACK OR SOMETHING LIKE THAT?
10 A. THAT'S CORRECT. YES. WE HAVE A SAYING IN THIS

11 FIELD, "CANCER CURES SMOKING."
12 SOMETIMES PEOPLE HAVE TO GET A VERY BAD DISEASE
13 BEFORE THEY'RE FINALLY ABLE TO GIVE IT UP. BUT EVEN THEN,
14 NOT ALL PEOPLE WHO GET CANCER OR WHO GET A HEART ATTACK OR
15 WHO GET OTHER DISEASES CAUSED BY SMOKING ARE ABLE TO QUIT.
16 Q. AND WHEN YOU QUIT SMOKING, OBVIOUSLY, THERE ARE
17 BENEFITS FOR QUITTING SMOKING?
18 A. YES.
19 Q. AND THAT'S SOMETHING YOU ENCOURAGE -- YOU AND
20 OTHER DOCTORS ENCOURAGE PEOPLE TO DO?
21 A. YES.
22 Q. ARE SOME OF THOSE BENEFITS ARE IMMEDIATE?
23 A. YES.
24 Q. AND WHAT ARE THOSE BENEFITS?
25 A. WELL, THERE WOULD BE IMMEDIATE BENEFITS FOR YOUR
26 HEART DISEASE RISK, BECAUSE NICOTINE IS WASHED OUT OF THE
27 SYSTEM FAIRLY QUICKLY. CARBON MONOXIDE, WHICH IS THOUGHT TO
28 PLAY A ROLE IN HEART DISEASE CAUSED BY SMOKING, THAT LEAVES
0822
1 THE SYSTEM VERY QUICKLY. CARBON MONOXIDE IS THE POISON
2 THAT'S IN CAR EXHAUSTS ALSO. IT'S IN TOBACCO SMOKE. AND
3 THAT IS ONE OF THE MAIN CULPRITS FOR HEART DISEASE CAUSED BY
4 SMOKING. THAT LEAVES THE BODY VERY QUICKLY AFTER SOMEBODY
5 QUILTS SMOKING.
6 SO THERE WILL BE HEART DISEASE BENEFITS VIRTUALLY
7 IMMEDIATELY AFTER A PERSON QUILTS SMOKING.
8 ANOTHER IMMEDIATE BENEFIT IS THAT THE EXCESS RISK
9 OF INFLUENZA, FLU AND PNEUMONIA, THAT WILL GO DOWN VERY
10 QUICKLY AFTER A PERSON QUILTS SMOKING.
11 I WAS REFERRING BEFORE TO THE ABILITY OF YOUR
12 LUNGS TO SWEEP OUT ALL THE DISEASE-CAUSED ORGANISMS THAT WE
13 BREATHE IN ALL THE TIME. THAT DAMAGE IS REVERSED VERY
14 QUICKLY WHEN A PERSON STOPS SMOKING.
15 SO THERE ARE SOME IMMEDIATE BENEFITS, BUT THERE
16 ARE MANY OTHERS THAT TAKE LONGER.
17 Q. NOW, WITH RESPECT TO CANCER, ARE THERE IMMEDIATE
18 BENEFITS TO QUITTING SMOKING?
19 A. I WOULDN'T CALL THEM IMMEDIATE, NO.
20 Q. CAN YOU GIVE US AN IDEA OF WHAT HAPPENS OVER TIME
21 THE LONGER YOU ARE QUIT.
22 A. IF WE LOOK AT LUNG CANCER, IF WE LOOK AT THE RISK
23 OF LUNG CANCER OVER TIME, OR FOR CURRENT SMOKERS VERSUS
24 EX-SMOKERS. IF WE LOOK AT EX-SMOKERS, DEPENDING ON HOW LONG
25 THEY'VE BEEN OFF CIGARETTES, WHAT WE SEE IS THAT THE LUNG
26 CANCER RISK GOES DOWN VERY SLOWLY AFTER A PERSON QUILTS
27 SMOKING.
28 SO, FOR EXAMPLE, FOR A MAN WHO SMOKES CIGARETTES,
0823
1 HE WOULD HAVE SOMETHING LIKE A 22-FOLD INCREASED RISK OF
2 GETTING LUNG CANCER COMPARED TO MAN WHO NEVER SMOKED. SO HE
3 WOULD HAVE 22 TIMES THE RISK OF GETTING LUNG CANCER COMPARED
4 TO THE MAN WHO NEVER SMOKED.
5 NOW, AFTER HE QUIT SMOKING, THAT RISK, WHAT WE
6 CALL A RELATIVE RISK, 22, THAT WOULD GO DOWN GRADUALLY OVER
7 TIME.
8 AND I COULD SHARE WITH YOU A CHART THAT WOULD
9 PORTRAY THAT, BUT IT WOULD SHOW THAT THE LUNG CANCER RISK
10 GOES DOWN GRADUALLY OVER A 15 TO 20-YEAR PERIOD OF TIME, BUT
11 STILL IS ELEVATED EVEN 16 OR MORE YEARS AFTER A PERSON HAS
12 BEEN OFF OF CIGARETTES.
13 Q. DO YOU HAVE A CHART THAT WOULD HELP ILLUSTRATE
14 THIS?
15 A. YES.

16 Q. OKAY.
17 I KNOW IT'S HERE.
18 WELL, AT THE RISK OF --
19 A. I COULD JUST SUMMARIZE FROM IT.
20 Q. I'M LOOKING FOR THE JUDGE'S COPY IS WHAT I'M
21 LOOKING FOR, BECAUSE WE HAVE USED YOURS.
22 THE COURT: HAS THIS BEEN MARKED AS A DOCUMENT?
23 MS. CHABER: NO, IT'S NOT. THAT'S WHY I'M
24 LOOKING FOR YOUR COPY, YOUR HONOR.
25 I HAD ADDITIONAL COPIES, I KNOW, ALTHOUGH I SEEM
26 TO HAVE MISPLACED IT.
27 WILL THE COURT INDULGE ME ON THIS ONE?
28 THE COURT: YES. WILL YOU SUPPLY IT FOR ME BY
0824
1 TOMORROW MORNING?
2 MS. CHABER: I CAN SUPPLY IT BEFORE WE LEAVE. I
3 JUST DON'T WANT TO TAKE THE JURY'S TIME.
4 THE COURT: ARE YOU GOING TO HAVE IT MARKED FOR
5 IDENTIFICATION?
6 MS. CHABER: REFLECTING THAT IT'S BEING SHOWN TO
7 COUNSEL.
8 THE COURT: ALL RIGHT.
9 DO YOU WANT TO HAVE THIS MARKED AS 1803 FOR
10 IDENTIFICATION?
11 MS. CHABER: YES, YOUR HONOR.
12 THE CLERK: PLAINTIFFS' EXHIBIT 1803.
13 (DOCUMENT MORE PARTICULARLY
14 LISTED IN THE INDEX MARKED
15 FOR IDENTIFICATION PLAINTIFFS'
16 EXHIBIT # 1803)
17 MS. CHABER: I GET EXERCISE DOING THIS.
18 Q. FIRST, DESCRIBE WHAT 1803 IS, AND THEN I'LL PUT
19 IT ON THE OVERHEAD PROJECTOR.
20 THE COURT: IT NEEDS TO BE IN EVIDENCE. EITHER
21 IT NEEDS TO BE IN EVIDENCE FIRST OR YOU HAVE TO HAVE AN
22 AGREEMENT THAT YOU CAN SHOW IT, EVEN THOUGH IT'S NOT IN
23 EVIDENCE.
24 SO YOU HAVE TO PROCEED ONE WAY OR THE OTHER.
25 MS. CHABER: I WOULD MOVE IT INTO EVIDENCE.
26 THE COURT: ANY OBJECTION?
27 MR. FURR: YOUR HONOR, I WOULD OBJECT TO IT
28 BEING MOVED INTO EVIDENCE. HEARSAY.
0825
1 BUT I HAVE NO OBJECTION TO IT BEING USED AS A
2 DEMONSTRATIVE.
3 THE COURT: IS THAT SATISFACTORY?
4 MS. CHABER: YES.
5 THE COURT: THERE IS NO OBJECTION TO IT BEING
6 SHOWN TO THE JURY.
7 FOR THE RECORD, YOU WITHDRAW THE OFFER OF IT INTO
8 EVIDENCE?
9 MS. CHABER: YES.
10 THE COURT: THEN YOU MAY SHOW IT PURSUANT TO THE
11 AGREEMENT OF COUNSEL.
12 AND I TAKE IT WE CAN HAVE THE UNDERSTANDING
13 THROUGHOUT THE TRIAL THAT IF ONE DEFENSE COUNSEL SPEAKS ON
14 AN ISSUE, THAT ALL OTHER DEFENSE COUNSEL ADOPT AND AGREE
15 WITH THAT POSITION, UNLESS YOU SPEAK UP AND SAY SOMETHING
16 DIFFERENT?
17 MR. FURR: YES, YOUR HONOR.
18 MR. ESCHER: YES, YOUR HONOR.
19 MR. HARDY: YES, YOUR HONOR.
20 MS. MASON: YES, YOUR HONOR.

21 THE COURT: OKAY. GOOD.
22 MS. CHABER: THE PROBLEM WITH TECHNOLOGY
23 (REFERRING TO ELECTRONIC EQUIPMENT). THERE WE GO. I THINK
24 WE HAVE A COLOR CHART.
25 I WILL TRY TO GET OUT OF THE JURY'S WAY SO THEY
26 CAN SEE.
27 Q. CAN YOU DESCRIBE, DOCTOR -- IF YOU NEED TO COME
28 DOWN, WOULD THAT BE EASIER?
0826
1 A. I CAN SEE IT.
2 Q. OKAY.
3 A. WELL, FIRST OF ALL, I THINK I HAVE TO EXPLAIN
4 WHAT THAT WORD "MORTALITY RATIO" MEANS UP THERE. AND YOU
5 WILL SEE THE NUMBERS GOING UP VERTICALLY UP TO 30, FROM ZERO
6 TO 30. AND THOSE NUMBERS ARE WHAT WE WOULD CALL A MORTALITY
7 RATIO. THAT'S THE RATIO OF DEATHS IN SMOKERS VERSUS DEATHS
8 IN NONSMOKERS.
9 SO IF THE RATIO IS ONE, WHICH IS THAT BLACK LINE
10 WHERE IT SAYS "NO INCREASED RISK" ON THE FAR RIGHT, THE
11 BOTTOM RIGHT CORNER, THAT LINE AT ONE, IT REFLECTS NO
12 INCREASED RISK. SO IF SOMEBODY HAS A MORTALITY RATIO OF
13 ONE, THEN THERE'S NO INCREASED RISK.
14 AND SO ON THE FAR LEFT -- MAYBE I SHOULD -- MAYBE
15 I SHOULD APPROACH THE SCREEN, IF THAT'S OKAY. I THINK THAT
16 WILL HELP.
17 MS. CHABER: ALL RIGHT. YOUR HONOR, DO YOU MIND
18 IF THE WITNESS STEPS DOWN?
19 THE COURT: NO.
20 MS. CHABER: DO WE HAVE A POINTER?
21 THE CLERK: YES.
22 THE COURT: YES.
23 MS. CHABER: Q. DR. DAVIS, DO YOU NEED A BOARD
24 TO WRITE ANY OF THIS DOWN?
25 A. NO.
26 AS I WAS MENTIONING, THIS HORIZONTAL LINE OF ONE
27 INDICATES NO INCREASED RISK, BECAUSE THE RATIO OF DEATHS IN
28 SMOKERS VERSUS PEOPLE WHO NEVER SMOKED WOULD BE ONE. IT
0827
1 WOULD BE THE SAME.
2 BUT IF WE LOOK AT CURRENT SMOKERS AND SEE MEN IN
3 BLUE AND WOMEN WHO SMOKE IN PURPLE, FOR MEN -- AND THIS IS
4 THOSE WHO SMOKE A PACK OR MORE A DAY OF CIGARETTES, WHICH
5 THIS FOOTNOTE SAYS -- FOR MEN WHO SMOKE A PACK OR MORE OF
6 CIGARETTES A DAY, THEIR RISK OF DYING FROM LUNG CANCER IS
7 ABOUT 26 TIMES THE RISK OF DYING FROM LUNG CANCER FOR MEN
8 WHO NEVER SMOKED.
9 THAT'S A 26-FOLD INCREASED RISK OF DYING FROM
10 LUNG CANCER FOR MEN WHO SMOKE A PACK OR MORE A DAY COMPARED
11 TO MEN WHO NEVER SMOKED.
12 Q. CAN YOU GIVE US AN IDEA IN TERMS OF LARGE, SMALL,
13 BIG, LITTLE, HOW THAT 26 TIMES RISK RELATES?
14 A. IT'S HUGE. IN PUBLIC HEALTH AND EPIDEMIOLOGIC
15 RESEARCH, THIS IS A HUGE INCREASED RISK FROM THIS PARTICULAR
16 EXPOSURE, WHICH IS EXPOSURE TO CIGARETTE SMOKE.
17 MOST OF THE STUDIES THAT WE DO THAT SHOW THAT
18 THIS CAUSES CANCER OR THAT CAUSES HEART DISEASE OR THIS
19 CAUSES TOXIC SHOCK SYNDROME OR WHAT HAVE YOU, THOSE RELATIVE
20 RISKS OR MORTALITY RATIOS -- THAT IS ANOTHER TERM, RELATIVE
21 RISK, MORTALITY RISK -- THOSE NUMBERS WOULD TEND TO BE MUCH
22 SMALLER.
23 FOR WOMEN, THE FIGURE IS ABOUT 16. SO WOMEN WHO
24 SMOKE A PACK OR MORE OF CIGARETTES A DAY HAVE ABOUT A
25 16-FOLD RISK OF DYING FROM LUNG CANCER COMPARED TO WOMEN WHO

26 NEVER SMOKED CIGARETTES.
27 Q. HAVE THERE BEEN SOME RECENT STUDIES LOOKING AT
28 WOMEN AND WHETHER THEY ACTUALLY HAVE A GREATER RISK OF LUNG
0828
1 CANCER FROM SMOKING CIGARETTES THAN MEN?
2 A. I THINK THERE HAS BEEN A STUDY OR TWO RECENTLY
3 THAT LOOKS AT IT ON AN EQUAL BASIS, MEN VERSUS WOMEN.
4 ONE MIGHT ASK, "WELL, WHY IS THE BAR HIGHER FOR
5 MEN THAN FOR WOMEN? WHY ARE MEN WHO SMOKE AT GREATER RISK
6 OF GETTING LUNG CANCER COMPARED TO WOMEN WHO SMOKE?"
7 AND THE REASON IS BECAUSE MEN --
8 MR. FURR: EXCUSE ME, DR. DAVIS. OBJECTION.
9 DR. DAVIS IS ANSWERING WITHOUT A QUESTION.
10 THE COURT: WHAT YOU ARE GOING TO HAVE TO DO,
11 DR. DAVIS, IS NOT PHRASE YOUR OWN QUESTIONS. YOU ARE GOING
12 TO HAVE TO WAIT FOR A QUESTION.
13 MS. CHABER: I THINK HE THINKS HE'S IN A
14 CLASSROOM.
15 THE COURT: OKAY.
16 MS. CHABER: Q. DOCTOR, CAN YOU EXPLAIN WHY
17 THERE IS A 26 TIMES RISK FOR MEN AND ONLY APPROXIMATELY 15
18 OR 16 TIMES RISK FOR WOMEN? WHAT DO THE DIFFERENT BARS
19 REPRESENT?
20 A. YES, I CAN.
21 Q. AND WILL YOU?
22 A. ABOUT THREE OR FOUR QUESTIONS AGO, YOU SAID:
23 "WHAT DOES THIS CHART SHOW?" SO THAT GAVE ME ENOUGH
24 LATITUDE TO MAKE THE POINTS I'M TRYING TO MAKE.
25 BUT YOUR MOST RECENT QUESTION, THE DIFFERENCE
26 BETWEEN MEN AND WOMEN, IS BECAUSE MEN IN THIS STUDY HAD BEEN
27 SMOKING FOR LONGER PERIODS OF TIME THAN WOMEN. THEY MIGHT
28 HAVE BEEN SMOKING FOR 30 OR 35 OR 40 YEARS.
0829
1 AND THE WOMEN WHO WERE SMOKING IN THIS STUDY
2 MIGHT HAVE BEEN SMOKING FOR ONLY 10 OR 15 YEARS. THE MEN
3 ALSO WERE SMOKING MORE CIGARETTES PER DAY THAN THE WOMEN.
4 AND THAT'S WHY THIS PARTICULAR STUDY -- WHICH WAS
5 DONE BY THE AMERICAN CANCER SOCIETY IN THE 1980S -- THAT'S
6 WHY THIS PARTICULAR STUDY SHOWED A HIGHER RISK OF LUNG
7 CANCER FOR MEN WHO SMOKED COMPARED TO WOMEN WHO SMOKED.
8 Q. AND THEN WHAT'S THE NEXT BAR DOWN?
9 A. THEN, AS WE MOVE TO THE RIGHT, WE SEE THE RISK OF
10 LUNG CANCER IN EX-SMOKERS. AND YOU SEE HERE (INDICATING),
11 EX-SMOKERS, ALL OF THESE BARS ARE FOR EX-SMOKERS, ACCORDING
12 TO HOW MANY YEARS THEY'VE BEEN OFF CIGARETTES, A NUMBER OF
13 YEARS SINCE QUITTING SMOKING.
14 AND SO THIS NEXT PAIR OF BARS ARE FOR THOSE WHO
15 QUIT SMOKING THREE TO FIVE YEARS AGO. AND IT SHOWS THE
16 DECREASE IN LUNG CANCER RISK FOR MEN, COMPARING CURRENT
17 SMOKERS AND THOSE WHO HAVE BEEN OFF CIGARETTES FOR THREE TO
18 FIVE YEARS, AND ALSO A SLIGHT DECREASE, MUCH SMALLER THOUGH,
19 A SLIGHT DECREASE FOR WOMEN.
20 Q. SO UP TO FIVE YEARS AFTER QUITTING SMOKING, A
21 WOMAN'S RISK OF DYING FROM LUNG CANCER IS JUST SLIGHTLY
22 LOWER THAN IT HAD BEEN AT ABOUT 16 TIMES?
23 A. CORRECT. IT LOOKS LIKE A MORTALITY RATIO OF 16
24 HERE AND THIS LOOKS LIKE MAYBE 15 (INDICATING).
25 SO THERE'S BEEN A SLIGHT DECREASE, BUT NOT MUCH,
26 ESPECIALLY COMPARED TO THE DECREASE FOR MEN.
27 Q. WHAT HAPPENS WHEN YOU GO SIX TO 10 YEARS OUT?
28 A. AGAIN, A PRETTY SHARP DECLINE FOR THE RISK OF
0830
1 LUNG CANCER FOR MEN, KIND OF FOLLOWING THE LINEAR PATTERN.

2 IF YOU ENVISION A LINEAR LINE GOING DOWN LIKE THIS
3 (INDICATING), AT THIS POINT WE START SEEING A MORE
4 SUBSTANTIAL DECREASE IN LUNG CANCER RISK FOR WOMEN WHO ARE
5 OFF CIGARETTES, IN THIS CASE FOR SIX TO 10 YEARS.

6 Q. SO A WOMAN WHO HAS QUIT SMOKING FOR 10 YEARS,
7 APPROXIMATELY, WHAT IS HER RISK OF DYING FROM LUNG CANCER?

8 A. IN THIS PARTICULAR GROUP, THOSE WHO HAVE BEEN OFF
9 FOR SIX TO 10 YEARS, IT LOOKS LIKE THE RELATIVE RISK WOULD
10 BE ABOUT 10. SO THEY WOULD HAVE 10 TIMES THE RISK OF DYING
11 FROM LUNG CANCER COMPARED TO WOMEN WHO NEVER SMOKED, EVEN
12 THOUGH THEY'VE BEEN OFF OF CIGARETTES FOR SIX TO 10 YEARS.

13 Q. WHAT HAPPENS WHEN YOU GET TO THE 11 TO 15 YEARS
14 OFF SMOKING?

15 A. IT CONTINUES DROPPING FOR BOTH MEN AND FOR
16 WOMEN. BUT YOU CAN SEE IT'S STILL WELL ABOVE THAT LINE AT
17 ONE WHICH REPRESENTS NO INCREASED RISK.

18 SO EVEN THOUGH THESE MEN AND THESE WOMEN HAVE
19 BEEN OFF CIGARETTES FOR 11 TO 15 YEARS, THEIR LUNG CANCER
20 RISK IS STILL WAY ABOVE THE LUNG CANCER RISK FOR MEN AND
21 WOMEN WHO HAVE NEVER SMOKED.

22 Q. AND THAT'S AT ABOUT -- IT'S HARD FOR ME TO SEE
23 THE ANGLE ACROSS THE 11 TO 15 YEARS -- THAT'S ABOUT FIVE OR
24 SIX TIMES RISK?

25 A. RIGHT.

26 Q. AND IS A SIX TIMES -- I DID JUST NOTICE THAT THE
27 BAR IS A LITTLE CURVED THERE, THE POINTER.

28 IS A SIX TIMES RISK OF LUNG CANCER A SIGNIFICANT
0831 RISK?

1 A. YES.

2 Q. DO YOU KNOW OF OTHER SUBSTANCES THAT HAVE THAT
3 TYPE OF RISK OF DYING FROM LUNG CANCER AS SIX TIMES?

4 A. NO, NOT BESIDES CIGARETTE SMOKING. THERE MIGHT
5 BE -- THERE ARE CERTAINLY OTHER CAUSES OF LUNG CANCER
6 BESIDES CIGARETTE SMOKING, BUT THEY ARE FAR LESS IMPORTANT
7 THAN CIGARETTE SMOKE. IT'S POSSIBLE THAT SOME -- WELL,
8 LET'S TAKE ASBESTOS, FOR EXAMPLE.

9 SOMEBODY WHO WORKS IN A SHIPYARD, SOMEBODY WHO IN
10 PAST DECADES WORKED IN A SHIPYARD AND WAS EXPOSED TO HUGE
11 AMOUNTS OF ASBESTOS, THEY MIGHT HAVE HAD AN INCREASED RISK
12 OF GETTING LUNG CANCER OF MAYBE FIVE OR SO.

13 SO THERE MAY BE SOME CAUSES OF LUNG CANCER THAT
14 WOULD GIVE YOU A RELATIVE RISK OF SOMEWHERE AROUND FIVE.
15 BUT HERE, WE ARE TALKING ABOUT CHEMICALS OR EXPOSURES THAT
16 ARE PRETTY UNCOMMON NOWADAYS.

17 Q. AND ALSO, WHEN WE'RE TALKING HERE, WE'RE TALKING
18 ABOUT SOMEONE WHO HAS QUIT SMOKING FOR SOMEWHERE BETWEEN 11
19 AND 15 YEARS, STILL HAVING A FIVE OR SIX TIMES RISK OF
20 GETTING LUNG CANCER; IS THAT CORRECT?

21 A. CORRECT.

22 Q. AND THEN, WHAT HAPPENS -- I GUESS THE NEXT ONE IS
23 16 PLUS?

24 A. THAT'S RIGHT.

25 Q. AND WHAT HAPPENS THERE?

26 A. THESE WOULD BE PEOPLE WHO HAVE BEEN OFF
27 CIGARETTES FOR 16 OR MORE YEARS (INDICATING). AND THE
28
0832 REASON WHY WE DON'T HAVE OTHER GROUPS OUT HERE (INDICATING),
1 LIKE THOSE WHO HAVE BEEN OFF CIGARETTES FOR 20 YEARS, 20 TO
2 24, 25 TO 29, IS BECAUSE THE STUDIES HAVEN'T FOLLOWED THOSE
3 PEOPLE THAT FAR INTO THE FUTURE DURING THAT LONG OF A PERIOD
4 OF ABSTAINING FROM CIGARETTES. THE STUDIES HAVEN'T GONE OUT
5 THAT FAR.

7 BUT IF WE LUMP THOSE PEOPLE IN THIS GROUP 16 OR
8 MORE YEARS OFF CIGARETTES, THE RISK IS STILL SUBSTANTIALLY
9 ELEVATED AMONG MEN, THAT MIGHT BE ABOUT FIVE, AGAIN, FIVE OR
10 SIX FOR WOMEN. IT CONTINUES TO GO DOWN FOR MEN. IT WENT
11 DOWN. BUT FOR WOMEN, IT CONTINUED TO GO DOWN, BUT IT'S
12 STILL ELEVATED ABOVE THE RISK THAT REPRESENTS THE LINE THAT
13 REPRESENTS NO INCREASED RISK. IT MIGHT BE TWO TO THREE. I
14 CAN'T QUITE TELL EXACTLY. I'D HAVE TO LOOK AT THE TABLES
15 AND GET THE ACTUAL NUMBERS.

16 BUT THERE'S STILL AN ELEVATION OF RISK, AND THAT
17 WOULD BE A STATISTICALLY SIGNIFICANT ELEVATION IN RISK, EVEN
18 WHEN THEY ARE OFF CIGARETTES FOR 16 OR MORE YEARS.

19 Q. SO TWO TIMES OR MORE RISK OF GETTING LUNG
20 CANCER. YOU SAY IT'S "STATISTICALLY SIGNIFICANT." WHAT DID
21 YOU MEAN BY THAT?

22 A. WELL, THAT MEANS IT'S NOT DUE TO CHANCE. THAT'S
23 JUST NOT -- THAT'S NOT JUST A COINCIDENTAL FINDING. IF YOU
24 DID SOME CALCULATIONS ON IT, WHICH WE DO IN EPIDEMIOLOGY ALL
25 THE TIME, YOU WOULD DETERMINE THAT THIS HAS A HIGH
26 PROBABILITY THAT IT'S A REAL FINDING, THAT THIS IS NOT JUST
27 DUE TO HAPPENSTANCE OR COINCIDENCE.

28 Q. THANK YOU DOCTOR.

0833

1 NOW, WE WERE TALKING JUST A MOMENT AGO ABOUT
2 OTHER THINGS CAUSING LUNG CANCER.

3 CAN YOU TELL US WHAT OTHER THINGS CAUSE LUNG
4 CANCER.

5 A. THE OTHER PRINCIPAL CAUSES OF LUNG CANCER WOULD
6 BE PASSIVE SMOKING; THAT WOULD BE ONE OF THEM, BEING EXPOSED
7 TO OTHER PEOPLE'S CIGARETTE SMOKE.

8 AND ACCORDING TO THE ENVIRONMENTAL PROTECTION
9 AGENCY, PASSIVE SMOKING --

10 MR. FURR: EXCUSE ME, DR. DAVIS.

11 I OBJECT. THIS IS HEARSAY.

12 THE COURT: SUSTAINED.

13 THE WITNESS: ACCORDING TO MEDICAL AUTHORITIES.
14 IS THAT ALLOWED?

15 THE COURT: NO. THE QUESTION WAS: "WHAT OTHER
16 THINGS CAUSE LUNG CANCER?"

17 AND YOU WERE SAYING "THE PRINCIPAL THINGS ARE."
18 THIS JUST CALLS FOR A LIST. IT DOESN'T CALL FOR YOU TO
19 DESCRIBE WHAT'S IN SOME DOCUMENT.

20 THE WITNESS: I UNDERSTAND. PASSIVE SMOKING OR
21 SECONDHAND SMOKE WOULD BE ONE. RADON EXPOSURE WOULD BE
22 ANOTHER. AND THEN EXPOSURES TO CERTAIN OCCUPATIONAL
23 TOXINS. AND I MENTIONED ASBESTOS MIGHT BE ANOTHER.

24 AGAIN, SOME OF THESE INVOLVE LARGE NUMBERS OF
25 PEOPLE, SOME VERY, VERY SMALL NUMBERS OF PEOPLE.

26 MS. CHABER: Q. AND HAS THE DIFFERENT TYPES OF
27 THINGS THAT CAN CAUSE LUNG CANCER BEEN LOOKED AT OR HAVE YOU
28 LOOKED AT IT IN TERMS OF RELATIVE RANKING WITH RESPECT TO

0834

1 CAUSING LUNG CANCER?

2 A. HAVE PEOPLE RANKED THESE VARIOUS CAUSES. IS THAT
3 YOUR QUESTION?

4 Q. YES.

5 A. YES.

6 Q. AND DO YOU HAVE A CHART THAT WOULD HELP
7 DEMONSTRATE THE VARIOUS RANKINGS OF THE DIFFERENT CAUSES OF
8 LUNG CANCER?

9 A. I HAVE A COUPLE OF CHARTS. I'M NOT EXACTLY SURE
10 WHAT YOU HAVE IN MIND.

11 THERE'S A CHART THAT LISTS THE NUMBER OF DEATHS

12 FROM SMOKING VERSUS THE NUMBER OF DEATHS FROM OTHER
13 PREVENTABLE CAUSES OF DEATH.
14 IS THAT WHAT YOU'RE REFERRING TO?
15 Q. I KNOW I HAVE IT SOMEWHERE. LET ME COMPARE MY
16 CHART AND YOURS, DOCTOR, AND SEE IF THEY ARE THE SAME.
17 A. YES.
18 MS. CHABER: OKAY. YOUR HONOR, WILL YOU ACCEPT
19 BLACK AND WHITE.
20 THE COURT: SURE.
21 MS. CHABER: I'LL SHOW COUNSEL FIRST.
22 THE COURT: WHILE YOU'RE OVER THERE WITH
23 WHATEVER YOU HAVE, DO YOU ALSO HAVE EXHIBIT 1803? WE CAN DO
24 THAT AT THE SAME TIME.
25 MS. CHABER: HOW ABOUT IF I GET IT MARKED, THIS
26 ONE MARKED WHILE WE'RE DOING THAT. I'M STEALING YOURS.
27 THE COURT: I'M ONLY DOING THIS AT THE BEGINNING
28 OF THE CASE. IF I DON'T KEEP CONTROL OF A COPY OF THESE
0835
1 EXHIBITS, IF WE START LETTING THIS SLIP, I WILL NEVER CATCH
2 UP WITH THE LAWYERS IN THIS CASE.
3 MS. CHABER: I APOLOGIZE, YOUR HONOR. I THINK I
4 LEFT ALL OF THIS IN THE BACK ROOM, SO I APOLOGIZE.
5 THE COURT: RIGHT NOW, I'M MISSING 1800, 1801,
6 1803, AND I GUESS THIS NEXT ONE IS GOING TO BE 1804.
7 MS. CHABER: HOW ABOUT AT THE BREAK, YOUR HONOR,
8 I WILL FIND THEM? I HAVE THEM.
9 THE COURT: PERFECT. THAT WOULD BE WONDERFUL.
10 MS. CHABER: THANK YOU.
11 THE COURT: I WOULDN'T NORMALLY WORRY ABOUT
12 THAT, EXCEPT THERE ARE SO MANY PAPERS HERE, I DON'T WANT TO
13 FALL BEHIND. I'LL NEVER CATCH UP.
14 THE CLERK: PLAINTIFFS' EXHIBIT 1804.
15 (DOCUMENT MORE PARTICULARLY
16 LISTED IN THE INDEX MARKED
17 FOR IDENTIFICATION PLAINTIFFS'
18 EXHIBIT # 1804)
19 MS. CHABER: Q. AND, DR. DAVIS, I'M HANDING YOU
20 1804.
21 IS THIS A CHART THAT WOULD HELP ILLUSTRATE THE
22 RELATIVE DEATHS FROM DIFFERENT CAUSES FROM SMOKING AS
23 COMPARED TO OTHER CAUSES OF LUNG CANCER OR -- I SAID THAT
24 ALL WRONG.
25 WHAT IS THIS CHART? THAT'S A MUCH EASIER
26 QUESTION.
27 A. IT'S ANNUAL DEATHS FROM SMOKING COMPARED WITH
28 OTHER CAUSED -- ANNUAL DEATHS FROM OTHER CAUSES IN THE
0836
1 UNITED STATES.
2 Q. OKAY.
3 A. SO IT'S NOT SPECIFIC TO LUNG CANCER, BUT IT LOOKS
4 AT HOW MANY DEATHS ARE CAUSED BY SMOKING VERSUS HOW MANY
5 DEATHS ARE CAUSED BY OTHER PREVENTABLE CAUSES.
6 MS. CHABER: OKAY. AND I'D OFFER THIS AS A
7 DEMONSTRABLE EXHIBIT ONLY.
8 THE COURT: I TAKE IT WHAT YOU ARE PROPOSING IS
9 THAT YOU SHOW IT TO JURY, THAT IT NOT BE OFFERED INTO
10 EVIDENCE?
11 MS. CHABER: YES.
12 THE COURT: IS THERE ANY OBJECTION TO THAT?
13 MR. FURR: NO OBJECTION.
14 THE COURT: OKAY. YOU MAY SHOW THAT.
15 MS. CHABER: Q. DO YOU NEED TO STEP DOWN
16 AGAIN? DO YOU THINK YOU CAN DO THIS FROM THERE?

17 A. NO. THIS ONE I CAN SEE.
18 Q. CAN YOU TELL US WHAT -- FIRST OF ALL, WE'VE GOT
19 NUMBERS GOING IN THE UP COLUMN FROM ZERO TO 440.
20 WHAT'S THAT?
21 A. THE NUMBER OF DEATHS IN THE UNITED STATES IN A
22 GIVEN YEAR. AND THOSE ARE THOUSANDS. SO 440 AT THE TOP
23 WOULD BE 440,000 DEATHS IN A GIVEN YEAR.
24 Q. OKAY. AND SO THOSE ARE NUMBERS THAT ARE
25 EXPRESSED IN THOUSANDS?
26 A. CORRECT.
27 Q. AND ACROSS THE BOTTOM, THERE ARE DIFFERENT CAUSES
28 OF DEATH IN THE UNITED STATES?
0837
1 A. YES.
2 Q. AND CAN YOU GIVE US AN IDEA OF THE NUMBER OF
3 DEATHS CAUSED BY AIDS IN THE UNITED STATES?
4 A. THAT PARTICULAR FIGURE ON THIS CHART FOR AIDS
5 LOOKS LIKE ABOUT 37 OR 38,000. THAT FIGURE MAY BE A BIT
6 OUTDATED, BUT IT WOULDN'T CHANGE MUCH TODAY. I'M SURE IT
7 WOULDN'T JUMP OR DROP SUBSTANTIALLY, EVEN IF WE WERE TO
8 UPDATE IT.
9 Q. AND THE NEXT CATEGORY IS ALCOHOL?
10 A. CORRECT.
11 Q. AND THESE ARE DEATHS RELATED TO ALCOHOL?
12 A. CORRECT. IT WOULD INCLUDE DISEASES LIKE
13 CIRRHOSIS OF THE LIVER, WHICH IS CAUSED BY ALCOHOL ABUSE, AS
14 WELL AS DRUNK DRIVING.
15 Q. AND APPROXIMATELY HOW MANY ANNUAL DEATHS FROM
16 ALCOHOL?
17 A. A LITTLE OVER 100,000, MAYBE 110,000.
18 Q. AND THE NEXT ONE IS MOTOR VEHICLE.
19 AND ABOUT HOW MANY DEATHS FROM MOTOR VEHICLE -- I
20 ASSUME THEY MEAN ACCIDENTS?
21 A. CORRECT. AROUND 40 OR 45,000. THAT WOULD
22 INCLUDE DRUNK DRIVING-RELATED MOTOR VEHICLE ACCIDENTS.
23 SO THERE WOULD BE A BIT OF OVERLAP BETWEEN THAT
24 SECOND BAR AND THE THIRD BAR.
25 Q. OKAY. SO SOME OF THE MOTOR VEHICLE ACCIDENTS
26 MIGHT BE DUE TO DRUNK DRIVING AND THOSE MIGHT GET ALSO
27 ATTRIBUTED TO DEATHS FROM ALCOHOL?
28 A. CORRECT.
0838
1 Q. AND THE NEXT ONE, IT SAYS "ETS."
2 WHAT DOES THAT MEAN?
3 A. ENVIRONMENTAL TOBACCO SMOKE, WHICH IS THE SAME
4 THING AS SECONDHAND SMOKE OR PASSIVE SMOKING.
5 AND THAT WOULD BE LUNG CANCER DEATHS FROM
6 ENVIRONMENTAL TOBACCO SMOKE, ABOUT 3,000 ACCORDING TO THE
7 BEST ESTIMATES, 3,000 LUNG CANCER DEATHS EACH YEAR DUE TO
8 SECONDHAND SMOKE, BUT WE COULD UPDATE THAT.
9 Q. THIS IS FROM WHEN, THIS CHART?
10 A. THERE HAVE BEEN DIFFERENT VERSIONS OF THIS CHART
11 THAT HAVE BEEN USED FOR MANY YEARS, BUT THIS ONE, THE
12 NUMBERS HERE MIGHT BE FOUR OR FIVE YEARS OLD.
13 BUT THAT WHILE MOST OF THESE NUMBERS WOULD NOT
14 CHANGE MUCH, IF WE WERE TO UPDATE THEM, THE ONE FOR ETS
15 WOULD SIGNIFICANTLY.
16 Q. AND WHAT WOULD THE CORRECT CURRENT NUMBER BE?
17 A. IT WOULD BE MORE LIKE 45,000 OR 50,000. SO IT
18 WOULD BE AT ABOUT THE SAME HEIGHT AS THE ONE WE JUST TALKED
19 ABOUT FOR MOTOR VEHICLES, BECAUSE THERE'S BEEN GROWING
20 EVIDENCE THAT SHOWS THAT SECONDHAND SMOKE CAUSES NOT ONLY
21 LUNG CANCER BUT ALSO HEART DISEASE.

22 AND IF YOU WERE TO INCLUDE THE HEART DISEASE
23 DEATHS CAUSED BY SECONDHAND SMOKE, THAT WOULD BRING THAT BAR
24 WAY UP, AS I JUST MENTIONED.
25 Q. AND THE NEXT CATEGORY IS FIRES?
26 A. CORRECT.
27 Q. AND ABOUT HOW MANY IS THAT?
28 A. A FEW THOUSAND.
0839
1 Q. AND WOULD THAT INCLUDE FIRES STARTED BY
2 CIGARETTES?
3 A. THAT'S RIGHT. A GOOD PORTION OF THOSE WOULD BE
4 CIGARETTE-CAUSED FIRES. IN FACT, CIGARETTES ARE THE MOST
5 IMPORTANT CAUSE OF HOME FIRES.
6 Q. AND THE NEXT IS HOMICIDE?
7 A. CORRECT.
8 Q. AND ABOUT HOW MANY -- I GUESS --
9 A. I THINK IT'S ABOUT BETWEEN 10 AND 15,000.
10 Q. AND NOW, ILLICIT DRUGS. THAT'S SEEMS TO BE ONE
11 BIG CATEGORY.
12 WHAT KIND OF DRUGS FALL INTO THAT?
13 A. COCAINE, HEROIN, MARIJUANA, LSD.
14 Q. ALL OF THOSE COMBINED, WHAT DO THEY NUMBER IN
15 TERMS OF ANNUAL DEATHS IN A YEAR?
16 A. I THINK IT'S BETWEEN FIVE AND 10,000.
17 Q. ARE YOU AWARE OF HEROIN CAUSING LUNG CANCER?
18 A. NO.
19 Q. COCAINE?
20 A. NO.
21 Q. WHAT WERE THE OTHER ONES? YOU SAID LSD?
22 A. LSD, NO.
23 Q. MARIJUANA?
24 A. NO.
25 Q. AND THE NEXT ONE IS SUICIDE.
26 ABOUT HOW MANY DEATHS FROM SUICIDE?
27 A. I THINK IT'S BETWEEN 30 AND 40,000.
28 Q. AND SMOKING IS THE LAST COLUMN.
0840
1 AND HOW MANY ANNUAL DEATHS FROM SMOKING, AT LEAST
2 AS OF THE TIME OF THIS, WHICH I THINK YOU SAID WAS ABOUT
3 FOUR OR FIVE YEARS AGO?
4 A. ABOUT 420,000 DEATHS EACH YEAR.
5 Q. AND HAS THAT NUMBER CHANGED UP OR DOWN IN THE
6 LAST FOUR OR FIVE YEARS?
7 A. NOT APPRECIABLY.
8 I DON'T WANT TO LOSE THESE. YOU MAY NEVER SEE
9 THEM AGAIN.
10 Q. YOU SAID THAT HEROIN DIDN'T CAUSE LUNG CANCER.
11 AND LSD AND COCAINE AND MARIJUANA. DO YOU KNOW
12 OF ANY CREDIBLE EVIDENCE THAT ANY OF THOSE SUBSTANCES CAUSE
13 LUNG CANCER?
14 A. I'M NOT AWARE OF ANY SCIENTIFIC CONSENSUS THAT
15 ANY OF THOSE CAUSES LUNG CANCER.
16 Q. IS THERE A SCIENTIFIC CONSENSUS THAT CIGARETTE
17 SMOKING CAUSES LUNG CANCER?
18 A. ABSOLUTELY, SINCE 1964.
19 Q. WITH RESPECT TO MARIJUANA, MARIJUANA IS AN
20 INHALED SUBSTANCE; CORRECT?
21 A. IN MOST CASES. I GUESS WE'VE HEARD ABOUT
22 MARIJUANA BROWNIES. IN MOST CASES, INHALED.
23 Q. SEE, I THOUGHT YOU WERE GOING TO SAY, "WE HEARD
24 ABOUT THE PRESIDENT WHO DIDN'T INHALE." I THOUGHT THAT'S
25 WHERE YOU WERE GOING WITH THAT.
26 IN TERMS OF AN INHALED SUBSTANCE, DOES IT HAVE

27 THE POTENTIAL TO CAUSE LUNG CANCER?
28 A. WELL, MARIJUANA SMOKE HAS TOXINS IN IT. IT HAS
0841
1 TOXINS, MEANING A TOXIC CHEMICAL.
2 MARIJUANA SMOKE DOES HAVE TOXIC CHEMICALS IN IT.
3 PROBABLY ANYTHING THAT YOU WOULD BURN, ESPECIALLY LEAVES
4 THAT YOU WOULD BURN, WOULD FORM TOXIC CHEMICALS IN THE
5 SMOKE. SO IF YOU WERE TO INHALE THAT SMOKE, THAT WOULD NOT
6 BE A GOOD THING.
7 BUT MARIJUANA CIGARETTES ARE TYPICALLY NOT SMOKED
8 LIKE TOBACCO CIGARETTES. IN TERMS OF THE NUMBER OF
9 CIGARETTES SMOKED PER DAY, IN TERMS OF HOW MANY YEARS PEOPLE
10 TYPICALLY SMOKE THEM, AND SO ON AND SO FORTH.
11 SO THERE'S NO EVIDENCE THAT MARIJUANA SMOKING
12 CAUSES LUNG CANCER, EVEN THOUGH THERE ARE, AS I SAID, TOXIC
13 CHEMICALS IN MARIJUANA SMOKE.
14 Q. HAVE THERE BEEN ANY PUBLISHED STUDIES THAT HAVE
15 SAID THAT MARIJUANA CAUSES LUNG CANCER?
16 A. NO.
17 Q. HAVE THERE BEEN ANY STUDIES PUBLISHED THAT LOOKED
18 AT THE ISSUE OF MARIJUANA AND WHETHER IT CAUSED LUNG CANCER
19 AND CONCLUDED THAT THERE WASN'T ENOUGH EVIDENCE?
20 A. WELL, THERE'S ONE STUDY DONE BY KAISER
21 PERMANENTE, WHICH IS A LARGE HMO, OF COURSE, HERE IN
22 CALIFORNIA AND ELSEWHERE, THAT LOOKED AT THE RISK OF CANCERS
23 IN PEOPLE WHO WERE REGULAR USERS OF LUNG CANCER -- OF
24 MARIJUANA, AND FOUND THAT THERE WAS NO EVIDENCE IN THAT
25 STUDY FOR AN INCREASED RISK OF LUNG CANCER OR OTHER TOBACCO
26 SMOKING-RELATED CANCERS IN THOSE WHO REGULARLY USED
27 MARIJUANA CIGARETTES.
28 Q. AND BY "REGULAR USE," WAS THAT DAILY?
0842
1 A. I DON'T REMEMBER THE DEFINITION OF IT. BUT MANY
2 PEOPLE WOULD DEFINE "REGULAR USE" TO BE DAILY, DAILY USE.
3 Q. YOU READ MEDICAL RECORDS AND CHARTS?
4 A. FROM TIME TO TIME.
5 Q. AND I SUPPOSE THERE'S SOME COURSE IN MEDICAL
6 SCHOOL THAT ENABLES DOCTORS TO READ EACH OTHER'S
7 HANDWRITING.
8 IF YOU SAW A REFERENCE TO EXTENSIVE MARIJUANA
9 SMOKING, WOULD YOU BE ABLE TO DEFINE WHAT "EXTENSIVE"
10 MEANT?
11 MR. FURR: OBJECTION, YOUR HONOR. NO FOUNDATION
12 FOR THIS TESTIMONY.
13 THE COURT: SUSTAINED.
14 MS. CHABER: Q. DO YOU LOOK AT ISSUES OF
15 PEOPLE'S USE OF SUBSTANCES SUCH AS MARIJUANA AS PART OF YOUR
16 WORK?
17 A. I MIGHT ON OCCASION, FROM TIME TO TIME.
18 Q. CAN YOU TELL US, IN TOBACCO SMOKE, HOW MANY
19 COMPOUNDS THERE ARE?
20 A. BETWEEN FOUR AND 5,000 HAVE BEEN -- FOUR AND
21 5,000 CHEMICALS OR COMPOUNDS HAVE BEEN IDENTIFIED IN TOBACCO
22 SMOKE.
23 Q. AND IN TERMS OF THE NUMBER OF THOSE COMPOUNDS
24 THAT HAVE BEEN IDENTIFIED, CAN YOU GIVE US AN IDEA OF HOW
25 MANY ARE CARCINOGENIC, CANCER-CAUSING?
26 A. AT LEAST 43. 43 WERE LISTED IN THE 1989 SURGEON
27 GENERAL'S REPORT AS BEING CANCER-CAUSING AGENTS.
28 MANY OTHERS BESIDES THOSE ARE DANGEROUS, EVEN
0843
1 THOUGH THEY MAY NOT CAUSE CANCER. FOR EXAMPLE, CARBON
2 MONOXIDE, WHICH I MENTIONED EARLIER.

3 MS. CHABER: YOUR HONOR, THIS MIGHT BE A GOOD
4 TIME FOR THE BREAK. AND I WILL TRY TO FIND --
5 THE COURT: I'D LIKE TO GO FOR A LITTLE BIT
6 LONGER.
7 MS. CHABER: OH, OKAY. I THOUGHT --
8 THE COURT: IF YOU DON'T MIND, AS WE GO THROUGH
9 THE TRIAL, UNLESS THERE'S A PARTICULAR REASON, I'LL
10 DETERMINE WHEN WE TAKE A BREAK, IF THAT'S OKAY WITH COUNSEL.
11 MS. CHABER: CERTAINLY. I JUST THOUGHT IT WAS A
12 GOOD STOPPING POINT.
13 THE COURT: I WASN'T BEING CRITICAL OF YOU.
14 MS. CHABER: I'M NOT BEING DEFENSIVE. I'M BEING
15 DEFENSIVE.
16 THE COURT: WE'RE STARTING A MULTIWEEK TRIAL.
17 WE'LL GET IN THE PRACTICE WHERE I'LL MAKE THE DETERMINATION.
18 BUT IF DO YOU HAVE A SPECIAL REASON, THEN SPEAK
19 UP.
20 MS. CHABER: I DIDN'T WANT TO GO -- I DO HAVE A
21 SPECIAL REASON, YOUR HONOR. I DIDN'T WANT TO FUMBLE THROUGH
22 LOOKING FOR ANOTHER DOCUMENT AND WASTE THE COURT'S TIME.
23 THE COURT: THAT MAY BE A GOOD ENOUGH REASON.
24 IF YOU NEED TIME TO GET ORGANIZED, THEN I PROBABLY WILL TAKE
25 A RECESS.
26 MS. CHABER: THAT WAS GOING TO BE MY REQUEST,
27 YOUR HONOR. IT WILL GO FASTER.
28 THE COURT: LET'S DO THAT.

0844

1 JURORS, THIS AFTERNOON, I HAVE ANOTHER MATTER ON
2 THE CALENDAR. I'M GOING TO GO WITH YOU TO ABOUT 4:30, 4:20
3 TO 4:30. THEN I'M GOING TO HAVE TO QUIT.
4 LET'S TAKE A 20-MINUTE RECESS. IT'S 3:15 RIGHT
5 NOW. THEN WE'LL GO SOMETIME PRETTY CLOSE TO 4:30.
6 PLEASE CONTINUE TO FOLLOW THE ADMONITION, AND
7 WE'LL SEE YOU BACK AT 4:15.
8 (RECESS TAKEN FROM 2:55 TO 3:17 P.M.)
9 THE COURT: WE ARE BACK ON THE RECORD.
10 YOU MAY PROCEED.
11 MS. CHABER: I'D LIKE TO HAVE THESE FOUR
12 DOCUMENTS MARKED.
13 AND, YOUR HONOR, THE BINDER -- THE DOCUMENTS ARE
14 BEING HOLE-PUNCHED. THE BINDER WILL COME FLYING INTO THIS
15 COURTROOM ANY MINUTE.
16 THE COURT: PERFECT.
17 THE CLERK: PLAINTIFFS' EXHIBITS 1805, 1806,
18 1807, 1808.

19 (DOCUMENTS MORE PARTICULARLY
20 LISTED IN THE INDEX MARKED
21 FOR IDENTIFICATION PLAINTIFFS'
22 EXHIBIT #S 1805 TO 1808)

23 MS. CHABER: I JUST NOTICED THAT YOU'RE NOT
24 GOING TO LIKE THESE TABS. I WILL GET BETTER ONES TOMORROW.
25 THE COURT: WHY DON'T I TAKE WHAT I CAN GET
26 TODAY, AND YOU CAN WORRY ABOUT IT LATER. YOU CAN HELP ME
27 OUT OVER THE EVENING.

28 MS. CHABER: I JUST NOTICED YOU HAVE TO SLIDE

0845

1 THE THING OUT TO PUT THE NUMBER ON.
2 THE COURT: I DON'T WANT TO KEEP THE JURY
3 WAITING FOR MY CONVENIENCE.
4 MS. CHABER: COUNSEL IS STILL LOOKING AT
5 DOCUMENTS.
6 THE COURT: IF YOU CAN JUST PUT THEM IN A
7 BINDER, JUST SO I HAVE THEM, WE'LL SETTLE FOR THAT RIGHT

8 NOW.
9 WHILE WE'RE DOING THAT, LET ME JUST TELL THE JURY
10 ABOUT THIS WEEK'S SCHEDULE.
11 RIGHT NOW, I HAVE MATTERS BOTH TOMORROW MORNING
12 AND FRIDAY MORNING. SOMETIMES, THINGS THAT ARE ON THE
13 CALENDAR GO OFF THE CALENDAR AT THE LAST MINUTE. SO I DON'T
14 WANT YOU TO CHANGE YOUR SCHEDULES IN RELIANCE ON WHAT I'M
15 TELLING YOU, BUT AS THINGS NOW APPEAR, TOMORROW WE ARE GOING
16 TO START AT 9:30, AND WE'LL PROBABLY ALSO START AT 9:30 ON
17 FRIDAY, UNLESS THE CALENDAR CHANGES.
18 ON BOTH THURSDAY AND FRIDAY, AS WELL AS TODAY, I
19 HAVE MATTERS ON THE CALENDAR AT THE END OF THE DAY. IF THEY
20 STAY ON THE CALENDAR, WE'LL QUIT SOMETIME BETWEEN 4:00 AND
21 4:30.
22 I NEED YOU TO CONTINUE TO REMAIN AVAILABLE FROM
23 9:00 TO 5:00, BUT YOU KNOW THAT THE LIKELIHOOD IS THAT IT
24 WILL BE 9:30 TO PROBABLY AROUND 4:30 BOTH DAYS.
25 BUT I WANT TO KEEP THE SITUATION FLEXIBLE, SO
26 THAT IF MY CALENDAR CLEARS UP, THAT YOU WOULD STILL REMAIN
27 AVAILABLE, BUT THAT'S THE LATEST INFORMATION I HAVE.
28 IN ANY EVENT, FOR TOMORROW, I KNOW WE'LL START AT
0846 9:30 IN THE MORNING, BECAUSE I KNOW THAT THAT MATTER IS ON
1 CALENDAR.
2
3 OKAY. ARE WE READY?
4 MS. CHABER: YES, YOUR HONOR.
5 FIRST OF ALL, HERE IS THE BINDER THAT HAS 1803,
6 04. I SEE ANOTHER ONE IN FRONT OF IT. THAT WILL BE LATER
7 ON.
8 THE COURT: THANK YOU.
9 MS. CHABER: AND TABS AND NUMBERS FROM 1805 TO
10 18. OKAY.
11 THE COURT: OKAY. THANKS.
12 MS. CHABER: SEE WHAT I MEAN BY THE TABS?
13 THE COURT: YES. THIS WILL DO FOR THE
14 AFTERNOON.
15 MS. CHABER: Q. DR. DAVIS, I HAVE HERE 1805,
16 1806, 1807 AND 1808.
17 CAN YOU IDENTIFY THESE AS CHARTS THAT WOULD HELP
18 EXPLAIN TESTIMONY WITH RESPECT TO USE OF ALCOHOL, MARIJUANA
19 AND COCAINE IN DIFFERENT AGE GROUPS?
20 A. YES.
21 MS. CHABER: I WILL OFFER THESE FOR DEMONSTRATIVE
22 PURPOSES AND WISH TO SHOW THEM TO THE JURY, YOUR HONOR.
23 THE COURT: ANY OBJECTION?
24 MR. FURR: NO OBJECTION FOR DEMONSTRATIVES, YOUR
25 HONOR.
26 THE COURT: OKAY. THEY WILL JUST BE SHOWN TO
27 THE JURY, 1805 THROUGH 1807. THEY'RE NOT RECEIVED INTO
28 EVIDENCE, BUT THEY ARE GOING TO BE SHOWN TO THE JURY BECAUSE
0847 THERE'S NO OBJECTION.
1 MS. CHABER: Q. DR. DAVIS, CAN YOU EXPLAIN
2 THIS FIRST CHART, 1805?
3 A. I'LL DO MY BEST. IT'S BEEN A WHILE SINCE I HAVE
4 SEEN A FEW OF THESE CHARTS, BUT I'LL DO MY BEST TO INTERPRET
5 THEM ON THE FLY.
6 I THINK IT WOULD BE EASIEST TO START WITH THE
7 BARS THAT ARE ON THE FAR RIGHT. AND YOU CAN SEE,
8 HORIZONTALLY THERE, ON THAT HORIZONTAL AXIS, IT SAYS
9 "SMOKING" --
10 Q. IF YOU NEED TO STEP DOWN, FEEL FREE TO.
11 I BELIEVE THE POINTER IS STILL AT THE EDGE
12

13 THERE.

14 A. THESE ARE THE BARS THAT I WAS REFERRING TO A
15 MOMENT AGO (INDICATING). AND THIS REPRESENTS CURRENT
16 CIGARETTE SMOKERS.

17 AND IT LOOKS AT THE PROPORTION OF CURRENT
18 CIGARETTE SMOKERS WHO USE THESE OTHERS DRUGS, AND YOU CAN
19 SEE THAT A LARGE PERCENTAGE OF CURRENT CIGARETTE SMOKERS,
20 ABOUT 40 PERCENT, USE ALCOHOL.

21 AND THIS IS ACCORDING TO A NATIONAL SURVEY ON
22 DRUG ABUSE DONE BY THE NATIONAL INSTITUTE ON DRUG ABUSE.
23 AND THIS IS FOR 1985.

24 Q. AND THIS IS A CHART THAT'S FROM THE 1994 SURGEON
25 GENERAL'S REPORT, IF YOU LOOK DOWN AT THE LOWER BOTTOM
26 CORNER?

27 A. THAT'S CORRECT. AND THIS BAR IN GREEN WOULD BE
28 THE PERCENTAGE OF CURRENT CIGARETTE SMOKERS WHO USE
0848 MARIJUANA. SO THAT WOULD BE ABOUT 25 PERCENT.

2 AND THIS BAR WOULD BE THE PERCENTAGE OF CURRENT
3 CIGARETTE SMOKERS WHO USE COCAINE. AND THAT WOULD BE ABOUT
4 EIGHT OR 10 PERCENT.

5 THE MIDDLE GROUP OF BARS WOULD SHOW THOSE SAME
6 PERCENTAGES, BUT FOR THIS IS ALL FOR 12 TO 17-YEAR-OLDS.

7 BY THE WAY, THIS WOULD BE FOR 12 TO 17-YEAR-OLDS
8 WHO HAD TRIED CIGARETTES BUT WERE NOT CURRENT CIGARETTE
9 SMOKERS.

10 YOU CAN SEE THAT THOSE WHO HAD TRIED CIGARETTES
11 BUT DIDN'T BECOME REGULAR CIGARETTE SMOKERS, THEY USE THESE
12 OTHER DRUGS AS SHOWN ON THESE MIDDLE BARS, AND THE
13 PERCENTAGES ARE MUCH LOWER THAN THEY ARE FOR THE CURRENT
14 CIGARETTE SMOKERS.

15 AND ON THE FAR LEFT, THESE BARS SHOW THE
16 STATISTICS FOR KIDS WHO NEVER SMOKED CIGARETTES. AND HERE
17 WOULD BE THE PERCENTAGES OF KIDS WHO NEVER SMOKED CIGARETTES
18 WHO DID USE ALCOHOL OR MARIJUANA OR COCAINE, AND THE
19 PERCENTAGES ARE EVEN LOWER (INDICATING).

20 Q. AND IN YOUR OPINION, WHAT DOES THAT CHART MEAN TO
21 YOU?

22 MR. FURR: OBJECTION, YOUR HONOR. EXCUSE ME,
23 DR. DAVIS.

24 YOUR HONOR, MAY WE APPROACH JUST VERY BRIEFLY?
25 THE COURT: SURE.
26 (COURT AND COUNSEL CONFER OUTSIDE
27 THE PRESENCE OF THE JURY)
28 MS. CHABER: YOU LOOK TOO COMFORTABLE, DR.

0849 DAVIS. I'M GOING TO GET YOU BACK DOWN HERE.

2 Q. EXHIBIT 1806. IS THIS THE SAME TYPE OF A CHART
3 AS WE JUST SAW BEFORE, FOR A DIFFERENT AGE GROUP?

4 A. YES.

5 Q. AND WHAT AGE GROUP ARE WE LOOKING AT NOW?

6 A. 18 TO 25-YEAR-OLDS (INDICATING).

7 Q. AND CAN YOU GO THROUGH THAT CHART IN THE CURRENT,
8 TRIED AND NEVER, IN THE SAME FASHION AS YOU DID THE OTHER
9 ONE?

10 A. SURE. PERHAPS MORE QUICKLY. THIS SET OF BARS ON
11 THE RIGHT WOULD BE CURRENT CIGARETTE SMOKERS IN THIS AGE
12 GROUP OF 18 TO 25. AND IT WOULD BE THE PERCENTAGE OF THOSE
13 CURRENT SMOKERS WHO USED ALCOHOL OR MARIJUANA OR COCAINE.

14 AND THEN, BY COMPARISON, WE WOULD LOOK AT 18
15 TO 25-YEAR-OLDS WHO WEREN'T CURRENT SMOKERS BUT WHO HAD
16 TRIED CIGARETTES IN THE PAST AND HOW MANY OF THEM USED THESE
17 DIFFERENT DRUGS.

18 AND THEN THE SAME THING FOR THOSE WHO NEVER
19 SMOKED CIGARETTES, WHAT PERCENTAGE OF THOSE INDIVIDUALS USED
20 THESE OTHER DRUGS.

21 Q. OKAY. AND THERE ARE SIMILAR AND CONSISTENT
22 CHARTS IN OTHER AGE GROUPS; 1807 IS FOR 26 TO 34-YEAR-OLDS?

23 A. CORRECT.

24 Q. AND DOES THIS FOLLOW THE SAME PATTERN AS WHAT YOU
25 JUST DESCRIBED?

26 A. YES. IF YOU ACTUALLY COMPARE THE NUMBERS,
27 THOUGH, THIS ASSOCIATION BETWEEN CIGARETTE SMOKING AND USING
28 THESE OTHER DRUGS IS STRONGEST FOR THE YOUNGEST AGE GROUP

0850

1 (INDICATING).

2 Q. OKAY. AND SO, IF WE GO BACK TO THE 12 TO
3 17-YEAR-OLDS, IS THAT WHAT YOU WERE REFERRING TO, AND THAT'S
4 EXHIBIT 1805?

5 A. RIGHT.

6 Q. AND SO WHAT PERCENTAGE OF CURRENT CIGARETTE
7 SMOKERS IN THE 12 TO 17-YEAR-OLD AGE GROUP USE COCAINE?

8 A. I THINK ABOUT 7 PERCENT.

9 Q. OKAY.

10 A. BUT WHEN I REFER TO AN ASSOCIATION, I'M COMPARING
11 THE HEIGHT OF THESE BARS (INDICATING) VERSUS THE HEIGHT OF
12 THESE BARS.

13 Q. CAN YOU EXPLAIN THAT?

14 A. YES. FOR EXAMPLE, IF WE FOCUS ON THE YELLOW BAR
15 (INDICATING) --

16 Q. THAT'S --

17 A. THE YELLOW BARS.

18 THE YELLOW BARS ARE THOSE WHO ARE CIGARETTE
19 SMOKERS, THOSE WHO TRIED CIGARETTES IN THE PAST OR THOSE WHO
20 HAVE NEVER USED CIGARETTES IN THE PAST. IT'S A PERCENT OF
21 THOSE WHO USED ALCOHOL.

22 AND IN THIS PARTICULAR STUDY, USING ALCOHOL MEANS
23 THEY BINGED ON ALCOHOL. IT'S NOT JUST HAD A BEER OR A SIP
24 OF BEER, BUT THEY BINGED.

25 AND YOU CAN COMPARE THE HEIGHT OF THIS BAR
26 (INDICATING), THIS YELLOW BAR, WITH THE HEIGHT OF THIS
27 YELLOW BAR. AND WHAT THAT SHOWS IS THAT THIS IS -- THIS
28 PERCENTAGE UP HERE IS 14 TIMES THE PERCENTAGE DOWN HERE.

0851

1 WHAT THAT MEANS, TRANSLATING IT INTO ENGLISH, IS
2 THAT KIDS IN THIS AGE WHO SMOKE CIGARETTES WERE 14 TIMES
3 MORE LIKELY TO USE ALCOHOL THAN KIDS WHO NEVER SMOKED
4 CIGARETTES. SO THAT'S THE ASSOCIATION.

5 THERE'S A 14-FOLD USE OF ALCOHOL FOR KIDS WHO
6 SMOKED CIGARETTES VERSUS KIDS WHO NEVER SMOKED CIGARETTES.
7 AND YOU COULD TO DO THE SAME THING FOR MARIJUANA AND FOR
8 COCAINE. AND YOU COULD DO IT IN THE OTHER AGE GROUPS AS
9 WELL.

10 AND THIS DIFFERENCE, THIS COMPARISON, THIS
11 ASSOCIATION, IS STRONGEST IN THIS AGE GROUP.

12 Q. THAT'S THE 12 TO 17-YEAR-OLD AGE GROUP.

13 AND THE PERCENTAGE IN THIS GROUP, THAT'S THE
14 PERCENT USING OTHER DRUGS?

15 A. CORRECT. IT'S THE PERCENT OF THESE, OF THE KIDS
16 IN THIS AGE GROUP. IN THESE DIFFERENT SMOKING CATEGORIES,
17 IT'S A PERCENT OF THEM WHO USE THESE OTHER DRUGS, THE
18 PERCENT USING OTHER DRUGS, BINGED ON ALCOHOL, USED
19 MARIJUANA, USED COCAINE.

20 Q. AND WHAT PERCENT OF 12 TO 17-YEAR-OLD CURRENT
21 SMOKERS BINGED ON ALCOHOL?

22 A. IT'S ABOUT 40 PERCENT.

23 Q. AND WHAT PERCENT OF 12 TO 17-YEAR-OLDS WHO WERE
24 CURRENT SMOKERS USED MARIJUANA?
25 A. I THINK IT'S BETWEEN 20 AND 25 PERCENT.
26 Q. AND WHAT PERCENTAGE OF 12 TO 17-YEAR-OLD CURRENT
27 SMOKERS USED COCAINE?
28 A. I THINK IT'S BETWEEN FIVE AND 10 PERCENT.
0852
1 Q. AND THEN CAN WE DO THE SAME THING WITH '97.
2 WHAT PERCENT OF NEVER SMOKERS DRANK ALCOHOL,
3 BINGED ON ALCOHOL?
4 A. IT'S ABOUT 3 PERCENT.
5 Q. AND MARIJUANA?
6 A. LESS THAN 1 PERCENT. I DON'T HAVE THE EXACT
7 PERCENTAGE OF THESE TWO BARS, BUT OBVIOUSLY, THEY'RE LOW,
8 AND ABOUT 1 PERCENT OR LESS.
9 Q. AND COCAINE?
10 A. SAME. BELOW -- AT OR BELOW 1 PERCENT.
11 Q. AND THEN IT GOES UP WITH THOSE WHO TRIED
12 CIGARETTES?
13 A. CORRECT.
14 Q. AND WHAT PERCENT OF THOSE WHO TRIED CIGARETTES
15 BINGED ON ALCOHOL?
16 A. ABOUT 16, 17 PERCENT.
17 Q. AND WHAT PERCENT OF THOSE WHO TRIED CIGARETTES
18 SMOKED MARIJUANA?
19 A. ABOUT 4 PERCENT.
20 Q. AND WHAT PERCENT OF THOSE WHO TRIED CIGARETTES IN
21 THIS 12 TO 17-YEAR-OLD AGE GROUP USED COCAINE?
22 A. ABOUT 2 PERCENT.
23 MS. CHABER: THANK YOU, DR. DAVIS.
24 YOUR HONOR, IN THE INTEREST OF TIME, I'M JUST
25 GOING TO HAVE SEVERAL DOCUMENTS MARKED. I'VE GOT COPIES FOR
26 YOU, HOPEFULLY IN THE SAME ORDER THAT THEY WILL BE WHEN I
27 GET THEM MARKED.
28 MS. CHABER: ONE, TWO, THREE, FOUR, FIVE
0853
1 DOCUMENTS. PLAINTIFFS' NEXT FIVE IN ORDER.
2 THE CLERK: PLAINTIFFS' EXHIBITS 1809 THROUGH
3 1813.
4 (DOCUMENTS MORE PARTICULARLY
5 LISTED IN THE INDEX MARKED
6 FOR IDENTIFICATION PLAINTIFFS'
7 EXHIBIT #S 1809 THROUGH 1814)
8 MS. CHABER: Q. DR. DAVIS, EARLIER WE WERE
9 TALKING ABOUT PEOPLE QUITTING SMOKING. AND YOU HAD
10 INDICATED THAT THERE WAS PERCENTAGES OF PEOPLE WHO, WHEN
11 QUESTIONED, WHO WERE SMOKERS, WHO SAID THEY WANTED TO QUIT
12 SMOKING?
13 A. YES.
14 Q. I'D LIKE TO SHOW YOU THE 1809.
15 IS THAT A CHART THAT HELPS ILLUSTRATE THIS POINT?
16 A. YES.
17 MS. CHABER: SORRY, COUNSEL.
18 I'D LIKE TO DISPLAY 1809 FOR DEMONSTRATIVE
19 PURPOSES.
20 THE COURT: ANY OBJECTION?
21 MR. FURR: NO OBJECTION.
22 THE COURT: YOU MAY DO SO.
23 MS. CHABER: Q. DR. DAVIS, CAN YOU EXPLAIN
24 THIS CHART?
25 A. THIS CHART SHOWS DATA FROM THE GALLUP POLL, WHICH
26 IS MENTIONED AS THE SOURCE AT THE BOTTOM FOR THE YEARS 1977
27 TO 1993.

28 AND THE QUESTION THAT WAS USED IN THIS POLL,
0854
1 WHICH WAS A NATIONAL SURVEY, WAS AS FOLLOWS -- AND THIS IS
2 SHOWN AT THE TOP OF THE CHART -- "ALL THINGS CONSIDERED,
3 WOULD YOU LIKE TO GIVE UP SMOKING OR NOT?"
4 AND THE CHART SHOWS DATA FROM SMOKERS, JUST
5 SMOKERS. AND THE LINE AT THE TOP SHOWS THE PERCENTAGE OF
6 SMOKERS WHO SAID YES, ALL THINGS CONSIDERED, THEY WOULD LIKE
7 TO GIVE UP SMOKING.
8 AND THEN THE DOTTED OR DASHED LINE BELOW THAT
9 SHOWS THOSE WHO SAID NO, AND THESE ARE PERCENTAGES.
10 SO THE PERCENTAGE OF SMOKERS WHO SAID THEY WOULD
11 LIKE TO GIVE UP SMOKING RANGED FROM ABOUT 60 PERCENT TO
12 ABOUT 80 PERCENT FOR ALL OF THESE YEARS.
13 I BELIEVE THE SURVEY WAS DONE IN ALL THE
14 DIFFERENT YEARS SHOWN ON THAT HORIZONTAL AXIS.
15 WELL, ACTUALLY, I'M NOT SURE EXACTLY WHICH YEARS
16 THE SURVEY WAS DONE, BUT IT WAS DONE REPEATEDLY DURING THIS
17 TIME PERIOD. AND MAYBE AT EACH POINT WHERE THERE IS AN
18 INFLECTION OR A CHANGE IN THE SLOPE OF THE LINE, THAT'S WHEN
19 THE SURVEY WAS DONE. BUT PERHAPS THE SURVEYS WERE DONE FIVE
20 OR SIX TIMES DURING THIS 16-YEAR PERIOD.
21 BUT YOU SEE PRETTY CONSISTENT FINDINGS DURING
22 THIS ENTIRE PERIOD. AS I SAID, THE PERCENTAGE THAT SAID
23 YES, THEY'D LIKE TO GIVE UP SMOKING RANGED FROM ABOUT 60 TO
24 80 PERCENT.
25 Q. HOW DOES THAT COMPARE WITH THE NUMBER OF PEOPLE
26 WHO GIVE UP SMOKING IN ANY GIVEN YEAR?
27 A. THIS PERCENTAGE IS MUCH HIGHER. IN FACT, A VERY
28 LOW PERCENTAGE OF THOSE PEOPLE WHO WANT TO QUIT SMOKING ARE
0855
1 ABLE TO QUIT SMOKING. ONLY ABOUT 3 PERCENT OF SMOKERS QUIT
2 IN A GIVEN YEAR, EVEN THOUGH ABOUT 60 TO 80 PERCENT SAY
3 THEY'D LIKE TO QUIT SMOKING.
4 Q. AND WE WERE TALKING ABOUT PEOPLE WHO HAD QUIT
5 SMOKING AND RELAPSES, OR ABILITY TO STAY QUIT FROM SMOKING.
6 I'M HANDING YOU 1810.
7 CAN YOU TELL US WHAT THAT CHART REFLECTS?
8 A. DID YOU WANT TO SHOW IT?
9 Q. I'M GOING TO DISPLAY IT, BUT JUST GENERALLY, DOES
10 THAT DEAL WITH RELAPSE RATES OVER TIME FOR SMOKING?
11 A. YES.
12 Q. AND DOES IT DEAL WITH RELAPSE RATES OVER TIME FOR
13 OTHER SUBSTANCES, SUCH AS HEROIN AND ALCOHOL?
14 A. YES.
15 MS. CHABER: I'D LIKE TO SHOW 1810 FOR
16 DEMONSTRATIVE PURPOSES.
17 THE COURT: ANY OBJECTION?
18 MR. FURR: NO OBJECTION.
19 THE COURT: YOU MAY.
20 MS. CHABER: Q. AND DR. DAVIS, COULD YOU
21 EXPLAIN WHAT WE'RE LOOKING AT.
22 A. THIS WAS A LARGE -- THESE ARE DATA FROM A LARGE
23 STUDY DONE AROUND 1970 BY A SCIENTIST NAMED HUNT AND HIS
24 COLLEAGUES, WHICH LOOKED AT THE RELAPSE RATE OVER TIME IN
25 PEOPLE DISCHARGED FROM DEPENDENCE TREATMENT CENTERS,
26 DEPENDENCE TREATMENT CENTERS WHERE THEY WERE BEING TREATED
27 FOR HEROIN ADDICTION, CIGARETTE SMOKING AND ALCOHOL ABUSE.
28 Q. AND I HAVE GIVEN YOU LOTS OF EXERCISE, BUT CAN
0856
1 YOU STEP DOWN SO THAT WE'RE CLEAR WHICH LINES ARE WHICH AND
2 WHERE THEY'RE GOING.
3 A. THIS HORIZONTAL AXIS (INDICATING) SHOWS THE TIME

4 IN MONTHS AFTER THESE PEOPLE WERE DISCHARGED FROM THE
5 DEPENDENCY TREATMENT CENTER. ZERO, THAT WAS ON THE DAY THAT
6 THEY WERE DISCHARGED FROM THE TREATMENT FACILITY.

7 AND THEN YOU CAN SEE --

8 Q. PRESUMABLY, WHEN THEY WERE DISCHARGED, THEY WERE
9 SUBSTANCE-FREE?

10 A. CORRECT. AND THIS ARROW HERE SHOWS TWO WEEKS
11 AFTER THEY WERE DISCHARGED (INDICATING).

12 ON THIS VERTICAL AXIS IS SHOWN THE PERCENT WHO
13 WERE ABSTAINERS. THEY WERE ABSTINENT FROM THE DRUG. THEY
14 WERE OFF THE DRUG AT THAT TIME.

15 SO IF YOU LOOK AT ABOUT THIS TIME PERIOD AT DAY
16 ONE, FOR EXAMPLE, VIRTUALLY ALL OF THE PEOPLE DISCHARGED
17 WERE STILL OFF THE DRUG. AS YOU POINTED OUT, THEY WERE, BY
18 DEFINITION, OFF THE DRUG BECAUSE THEY WERE DISCHARGED FROM
19 TREATMENT.

20 BUT WITHIN A FEW DAYS AND A WEEK OR TWO, THERE
21 WAS A HUGE RATE OF RELAPSE. SO AS PEOPLE RELAPSED BACK TO
22 THE DRUG, AS THEY GO BACK TO THE DRUG, THE PERCENT WHO ARE
23 ABSTINENT GOES DOWN.

24 AND SO BY ABOUT ONE WEEK -- OR ONE TO TWO WEEKS
25 AFTER DISCHARGE, FOR EXAMPLE, THOSE WHO WERE BEING TREATED
26 FOR ALCOHOL ABUSE, THE PERCENTAGE OF THEM OFF ALCOHOL
27 DROPPED FROM 100 PERCENT DOWN TO ABOUT 62 PERCENT.

28 SO ALMOST FOURTH-FIFTHS -- ALMOST TWO-FIFTHS OF
0857

1 THEM RELAPSED BACK TO ALCOHOL JUST WITHIN A WEEK OR TWO. A
2 VERY QUICK RELAPSE BY A LARGE NUMBER OF PEOPLE WHO HAD BEEN
3 TREATED.

4 A SIMILAR DROP FOR THESE OTHER DRUGS, HEROIN AND
5 CIGARETTES.

6 AND THE MAIN POINT HERE IS THAT A LOT OF RELAPSE
7 OCCURS EARLY ON, WITHIN THE FIRST COUPLE OF WEEKS OR THE
8 FIRST THREE MONTHS AS SHOWN HERE (INDICATING), A HUGE AMOUNT
9 OF RELAPSE. DOWN TO ABOUT ONE-THIRD OF PEOPLE WHO WERE
10 DISCHARGED ARE STILL OFF THE DRUG. TWO-THIRDS HAVE
11 RELAPSED, BUT THIS IS ABOUT ONE-THIRD (INDICATING).
12 ONE-THIRD ARE STILL ABSTINENT.

13 AND THEN OVER TIME, THE PERCENT ABSTINENT
14 DECLINES SLOWLY. SO THERE IS STILL SOME RELAPSE BEYOND
15 THREE MONTHS, SOME GRADUAL RELAPSE, BUT NOT NEARLY AS MUCH
16 AS YOU SAW IN THIS EARLY PERIOD AFTER BEING DISCHARGED FROM
17 TREATMENT.

18 AND SO THE IMPORTANT POINTS IN THIS GRAPH ARE,
19 NO. 1, THIS HUGE RELAPSE EARLY ON (INDICATING), FOLLOWED BY
20 A LEVELING OFF, BUT JUST A SLOW RATE OF RELAPSE OVER TIME.

21 AND THEN THE SECOND POINT IS THAT THESE CURVES
22 FOR THE THREE DIFFERENT DRUGS ARE VERY SIMILAR. THEY'RE
23 ALMOST RIGHT ON TOP OF EACH OTHER.

24 AND THAT POINTS OUT HOW THESE DRUGS OF ADDICTION
25 ARE VERY SIMILAR IN THIS PARTICULAR CASE, IN RELAPSE, IN
26 RELAPSE AFTER QUITTING.

27 Q. I JUST WANT TO GET SOME SPECIFIC TIME POINTS ON
28 THE SMOKING RELAPSE.

0858
1 SO DISCHARGE, 100 PERCENT, THEY'RE QUITTERS;
2 THEY'VE QUIT SMOKING?

3 A. CORRECT.

4 Q. AND AT APPROXIMATELY TWO WEEKS OUT, WHAT PERCENT
5 ARE STILL QUIT?

6 A. WELL, IF WE FOLLOWED UP TWO WEEKS (INDICATING),
7 IF SMOKING IS THE RED LINE, IT MIGHT BE THAT 15 OR 20
8 PERCENT OF THEM HAVE ALREADY RELAPSED WITHIN TWO WEEKS.

9 Q. AND THEN, IF YOU TAKE IT OUT TO THE THREE-MONTH
10 TIME PERIOD, WHERE THE SHARP DECLINE IS, HOW MANY SMOKERS
11 ARE STILL QUIT?
12 A. ABOUT 30 PERCENT. SO ABOUT 70 PERCENT HAVE
13 RELAPSED. 30 PERCENT WOULD STILL BE OFF CIGARETTES.
14 Q. AND WHEN YOU GET OUT TO 12 MONTHS, OR A YEAR OUT,
15 WHAT IS THE PERCENTAGE OF SMOKERS WHO HAVE REMAINED QUIT A
16 YEAR OUT AFTER A SUBSTANCE ABUSE RELEASE?
17 A. IT LOOKS LIKE BETWEEN 10 AND 15 PERCENT.
18 Q. SO 10 OR 15 PERCENT.
19 SO WE'RE TALKING 85 TO 90 PERCENT HAVE BEGUN
20 SMOKING AGAIN?
21 A. CORRECT.
22 MS. CHABER: YOU KNOW BETTER TO MOVE NOW.
23 EXHIBIT 1811, I'D OFFER FOR DEMONSTRATIVE
24 PURPOSES TO SHOW TO THE JURY.
25 THE COURT: WAIT A MINUTE. DON'T PUT IT UP
26 UNTIL I CLEAR IT.
27 MS. CHABER: I'M SORRY.
28 THE COURT: ANY OBJECTION?
0859
1 MR. FURR: NO OBJECTION.
2 THE COURT: NOW YOU CAN SHOW IT.
3 MS. CHABER: Q. WHAT IS THIS CHART, DR. DAVIS?
4 A. IT SHOWS THE RISKS OF VARIOUS ACTIVITIES
5 (INDICATING), SUCH AS ACTIVE SMOKING, WHICH REFERS TO
6 SMOKING BY THE SMOKER AS OPPOSED TO PASSIVE SMOKING, WHICH
7 IS THE NONSMOKER WHO BREATHE IN SECONDHAND SMOKE.
8 SO THE RISK OF ACTIVE SMOKING, THE RISK OF
9 ALCOHOL USE IN REGARDS TO ACCIDENTS, SUCH AS CAR CRASHES OR
10 IN REGARDS TO DISEASE, SUCH AS CIRRHOSIS OF THE LIVER, MOTOR
11 VEHICLE ACCIDENTS, INCLUDING THOSE INVOLVING ALCOHOL AND
12 THOSE NOT INVOLVING ALCOHOL, WORK AS A RISK FOR A WORKSITE
13 ACCIDENT, FOR EXAMPLE, SWIMMING, PLAYING FOOTBALL,
14 ELECTROCUTION, GETTING HIT BY LIGHTNING, BEE STING,
15 BASKETBALL.
16 SO IT MEASURES THE RISKS OF THESE VARIOUS
17 ACTIVITIES, AND IT COMPARES THEM, USING ANNUAL FATALITIES,
18 FOR EVERY 1,000,000 PEOPLE EXPOSED TO THIS PARTICULAR
19 ACTIVITY OR CAUSE.
20 Q. I MEAN, IF YOU DON'T GO SWIMMING, YOU'RE NOT
21 GOING TO HAVE A FATALITY AS A RESULT?
22 A. CORRECT.
23 Q. OBVIOUSLY, AT THE TOP OF THE LIST IS ACTIVE
24 SMOKING?
25 A. CORRECT. WITH 7,000 FATALITIES PER 1 MILLION
26 EXPOSED PERSONS. "EXPOSED PERSONS" REFERRING TO 7,000
27 SMOKERS.
28 Q. OKAY. AND AS YOU SAID, THIS DOES NOT RELATE TO
0860
1 PASSIVE SMOKING, TO PEOPLE WHO ARE NOT THE SMOKERS?
2 A. CORRECT.
3 MS. CHABER: PLAINTIFF WOULD OFFER 1812 FOR
4 DEMONSTRATIVE PURPOSES.
5 THE COURT: ANY OBJECTION?
6 MR. FURR: NO OBJECTION.
7 THE COURT: YOU MAY SHOW IT.
8 MS. CHABER: Q. DR. DAVIS, WHAT DOES THIS CHART
9 REPRESENT?
10 A. THIS CHART SHOWS CIGARETTE CONSUMPTION IN LUNG
11 CANCER DEATHS IN THE UNITED STATES FROM 1900 TO 1984. AND
12 ON THE LEFT (INDICATING) IS SHOWN THE NUMBER OF CIGARETTES
13 CONSUMED IN THE UNITED STATES IN A GIVEN YEAR.

14 AND YOU FOLLOW THE RED LINE TO LOOK AT THE NUMBER
15 OF CIGARETTES CONSUMED IN THE UNITED STATES. AND THIS -- I
16 THINK IT'S BLUE -- THIS BLUE LINE REPRESENTS THE NUMBER OF
17 DEATHS FROM LUNG CANCER IN THESE GIVEN YEARS.

18 AND HERE ARE THE NUMBERS FOR THOSE DEATHS
19 (INDICATING).

20 Q. I NOTICE THAT THE NUMBER OF CIGARETTES CONSUMED
21 ON THAT CHART BEGINS AT 1900?

22 A. CORRECT.

23 Q. AND IS PRETTY FLAT TILL ABOUT 1910?

24 A. YES.

25 Q. AND IS ABOUT 1910 THE POINT WHERE CIGARETTES
26 STARTED TO INCREASE OR PEOPLE STARTED TO INCREASE CIGARETTE
27 SMOKING?

28 A. CORRECT.

0861

1 Q. AND THE BLUE LINE THAT REPRESENTS THE NUMBER OF
2 DEATHS FROM LUNG CANCER, NOW, THIS IS SPECIFICALLY LUNG
3 CANCER AND NOT ALL THE OTHER THINGS THAT SMOKING CAUSES;
4 CORRECT?

5 A. CORRECT.

6 Q. THAT LINE BEGINS SOMEWHERE AROUND 1934 OR '5?

7 A. RIGHT.

8 Q. AND WHY DOES THAT LINE START THERE?

9 A. BECAUSE PRIOR TO THIS PERIOD OF TIME
10 (INDICATING), THERE WERE VERY FEW LUNG CANCER DEATHS. THERE
11 WERE SOME, BUT NOT MANY.

12 I'M NOT SURE EXACTLY WHY WE DON'T SEE SOME LOWER
13 LEVEL NUMBERS HERE OR SOMETHING, WHICH MIGHT BE PRETTY CLOSE
14 TO THIS HORIZONTAL AXIS. IT MAY BE -- IT MAY BE THAT DATA
15 COLLECTION WASN'T QUITE AS ACCURATE HERE, OR FOR SOME REASON
16 THE PEOPLE THAT PUT TOGETHER THIS CHART DIDN'T SHOW THE
17 EARLIER NUMBERS. IF YOU DID ADD THEM, THEY'D BE LIKE THAT.

18 Q. WAS THERE ABOUT A 20-YEAR LAG TIME BETWEEN THE
19 START OF THE CONSUMPTION OF CIGARETTES AND THE START OF LUNG
20 CANCER ON THAT CHART?

21 A. I'D SAY 20 TO 30 YEARS. ABOUT 20 TO 30 YEARS
22 AFTER CIGARETTE SMOKING WOULD RISE, WE'D SEE A CORRESPONDING
23 RISE IN LUNG CANCER DEATHS.

24 IF, FOR EXAMPLE, YOU LOOK AT WHEN THESE TWO LINES
25 (INDICATING), THE RED AND THE BLUE LINE CROSS, CROSS THIS
26 POINT RIGHT HERE.

27 Q. AND THAT POINT IS?

28 A. EITHER 100 BILLION CIGARETTES CONSUMED OR 20,000

0862

1 LUNG CANCER DEATHS. THAT WILL TELL YOU HOW FAR APART THESE
2 PATTERNS ARE IN TIME.

3 FOR EXAMPLE, THIS RED LINE FOR CIGARETTE
4 CONSUMPTION WOULD CROSS THIS HORIZONTAL LINE AT ABOUT, OH,
5 1926 OR '27, AND THE BLUE LINE WOULD CROSS THE HORIZONTAL
6 LINE AT ABOUT 1952, SO THAT WOULD BE ABOUT 10, 20, 24, 25
7 YEARS.

8 SO IF YOU DID THAT ALL THE WAY UP, YOU'D SEE A
9 GAP BETWEEN THESE LINES REPRESENTING MAYBE 20 TO 30 YEARS
10 (INDICATING).

11 Q. AND ABOUT 1952, THAT'S ABOUT WHEN THERE WERE
12 NUMEROUS PUBLICATIONS TALKING ABOUT THE EXTRAORDINARY RISE
13 IN LUNG CANCER AND THE ASSOCIATION WITH CIGARETTE SMOKING?

14 MR. FURR: OBJECTION, YOUR HONOR. LEADING.

15 THE COURT: I'LL SUSTAIN.

16 MS. CHABER: Q. WHEN WAS THE FIRST TIME PERIOD
17 THAT THERE WAS REPORTAGE OF AN EXTRAORDINARY INCREASE IN
18 LUNG CANCER AND AN ASSOCIATION WITH CIGARETTE SMOKING?

19 A. AROUND 1950, 1955, WE HAD SOME CASE CONTROL
20 STUDIES PUBLISHED IN THE BRITISH MEDICAL JOURNAL. AND THE
21 JOURNAL OF AMA, RESEARCHERS IN THE UNITED KINGDOM, IN THE
22 UNITED STATES WERE COMING OUT IN STUDIES BEGINNING AROUND
23 1950, AND EXTENDING INTO THE 1950S, WITH CANCER STUDIES,
24 WHAT WE CALL PROSPECTIVE MORTALITY STUDIES.

25 SO CASE CONTROL STUDIES AND PROSPECTIVE MORTALITY
26 STUDIES -- WE DIDN'T COVER THAT IN THE EPIDEMIOLOGY 101 THAT
27 WE DID EARLIER IN THE DAY. ANYWAY, DIFFERENT KINDS OF
28 STUDIES WERE SHOWING THE SAME THING, A STRONG ASSOCIATION

0863
1 BETWEEN CIGARETTE SMOKING AND LUNG CANCER.

2 Q. AND IS THAT ABOUT THE SAME TIME PERIOD THAT
3 FILTER CIGARETTES STARTED COMING OUT?

4 A. I'D HAVE TO GO BACK AND LOOK AT THE STATISTICS.
5 BUT CERTAINLY TOWARD THE SECOND HALF OF THE 1950S
6 (INDICATING), WE SAW SIGNIFICANT INTRODUCTION OF FILTERED
7 CIGARETTES.

8 Q. OKAY. AND NOW THE LUNG CANCER DEATHS ARE RISING
9 EACH YEAR?

10 A. THAT'S CORRECT. ALTHOUGH, IF WE WERE TO GO TO
11 BEYOND 1984 AND GO INTO THE 1990S, YOU WOULD SEE A LEVELING
12 OFF IN LUNG CANCER DEATHS AMONG MEN.

13 Q. OKAY. DO YOU SEE THAT SAME LEVELING OFF IN LUNG
14 CANCER DEATHS AMONG WOMEN?

15 A. YOU MIGHT -- YOU MIGHT BE SEEING THE VERY
16 BEGINNING OF IT. BUT THE LEVELING OFF OCCURRED AMONG MEN
17 MUCH EARLIER AND IT'S MUCH MORE EVIDENT THAN IT IS AMONG
18 WOMEN.

19 Q. AND THE CONSUMPTION OF CIGARETTES, DOES IT
20 PARALLEL THE LEVEL OF LUNG CANCER DEATHS?

21 A. YES. I THINK, IF YOU EYEBALL THIS, YOU CAN SEE
22 THAT THESE ARE PRETTY PARALLEL, THESE LINES HERE
23 (INDICATING).

24 THE COURT: IF YOU'VE GOT ONE MORE CHART, WHY
25 DON'T YOU DO ONE CHART. THEN LET US KNOW WHEN YOU'RE DONE
26 WITH THAT, AND THEN WE'LL BREAK FOR THE DAY.

27 MS. CHABER: OKAY.

28 THE COURT: YOU HAVE GOT ONE MORE?

0864
1 MS. CHABER: IT'S ALREADY BEEN SHOWN TO
2 COUNSEL.

3 SHOWING EXHIBIT 1813 FOR DEMONSTRATIVE PURPOSES.

4 THE COURT: ANY OBJECTION?

5 MR. FURR: NO OBJECTION.

6 THE COURT: YOU MAY DO THAT.

7 MS. CHABER: Q. AND, DR. DAVIS, WHAT DOES THIS
8 CHART REPRESENT?

9 A. THIS CHART SHOWS THE MORTALITY RATIO FOR LUNG
10 CANCER FOR FEMALE CIGARETTE SMOKERS COMPARED TO FEMALES WHO
11 NEVER SMOKED.

12 LET ME BREAK THAT DOWN. WE ALREADY TALKED ABOUT
13 MORTALITY RATIO, WHICH IS THE RATIO OF DEATHS IN THE SMOKERS
14 VERSUS DEATHS IN THOSE WHO NEVER SMOKED. SO ANYTHING ABOVE
15 ONE IS AN ELEVATED RISK.

16 HERE IS ONE (INDICATING), AND THIS IS THE NUMBER
17 OF CIGARETTES SMOKED DAILY. AND FOR THOSE WHO SMOKED ZERO
18 CIGARETTES DAILY, THEIR MORTALITY RATIO IS ONE.

19 Q. AND WHAT DOES THAT MEAN?

20 A. THAT MEANS THEY HAVE NO INCREASED RISK OF DYING
21 FROM LUNG CANCER.

22 Q. AND WHAT DO THE NEXT COLUMNS MEAN?

23 A. THE NEXT BAR SHOWING "ALL SMOKERS" --I THINK THIS

24 SAYS "SM." THAT MEANS ALL SMOKERS.
25 AND ACCORDING TO THIS STUDY, WHICH WAS ONE WE
26 LOOKED AT BEFORE, THE AMERICAN CANCER SOCIETY'S CANCER
27 PREVENTION II STUDY, WHICH IS THE LARGEST STUDY --THE
28 LARGEST MORTALITY STUDY OF ITS KIND THAT I'M AWARE OF IN THE
0865

1 UNITED STATES, IT SHOWS THAT ALL SMOKERS HAD A LUNG CANCER
2 MORTALITY RATIO, ALL FEMALE SMOKERS, OF ABOUT 12.

3 SO WOMEN WHO WERE SMOKERS, CIGARETTE SMOKERS HAD
4 ABOUT 12 TIMES THE RISK OF DYING FROM LUNG CANCER COMPARED
5 TO WOMEN WHO NEVER SMOKED.

6 I THINK I MENTIONED THE FIGURE FOR MEN EARLIER,
7 WHICH WAS 22. FOR WOMEN, IT'S 12, AS SHOWN HERE FOR ALL
8 WOMEN SMOKERS, 12 TIMES THE RISK OF DYING FROM LUNG CANCER
9 COMPARED TO WOMEN WHO NEVER SMOKED.

10 Q. AND WHAT DO THE NEXT COLUMNS REPRESENT?

11 A. THIS BREAKS DOWN WOMEN SMOKERS ACCORDING TO THE
12 NUMBER OF CIGARETTES THEY SMOKED DAILY.

13 STARTING WITH THOSE WHO SMOKED FEWER THAN 10
14 CIGARETTES, I THINK IT'S 10 OR FEWER CIGARETTES PER DAY
15 VERSUS THOSE WHO SMOKED 11 TO 19 CIGARETTES A DAY, 20
16 CIGARETTES A DAY, AND 21 TO 30 CIGARETTES A DAY, AND 31 OR
17 MORE CIGARETTES A DAY.

18 SO WHAT YOU SEE IS THAT WOMEN SMOKERS WHO WERE
19 FAIRLY LIGHT SMOKERS, LESS THAN 10 CIGARETTES A DAY, THEY
20 HAD ABOUT A SIXFOLD INCREASED RISK OF DYING FROM LUNG CANCER
21 COMPARED TO WOMEN WHO NEVER SMOKED. SO STILL A
22 SUBSTANTIALLY INCREASED RISK OF DYING FROM LUNG CANCER
23 COMPARED TO WOMEN WHO NEVER SMOKED, BUT NOT AS BIG A RISK
24 FOR ALL SMOKERS, BECAUSE THESE ARE THE LIGHTER SMOKERS.

25 Q. OKAY.

26 A. BUT THEN, IF YOU GO TO THE HEAVIER SMOKERS, YOU
27 SEE THAT THEY HAVE A HIGHER ELEVATION IN THEIR LUNG CANCER
28 RISK COMPARED TO ALL SMOKERS.

0866
1 Q. SO 11 TO 19 AT THE BOTTOM, THAT'S ABOUT A HALF
2 TO JUST UNDER A HALF --JUST UNDER PACK A DAY?

3 A. CORRECT. 20 CIGARETTES IN A PACK.

4 SO THEY HAVE A MORTALITY RATIO OR A RELATIVE
5 RISK, AS WE SOMETIMES CALL IT, OF MAYBE 13 OR SO, A LITTLE
6 BIT HIGHER THAN ALL WOMEN SMOKERS.

7 BUT THE KEY POINT HERE, I THINK IN THIS CHART, IS
8 THAT THE MORE YOU SMOKE PER DAY, THE HIGHER YOUR RISK OF
9 DYING FROM LUNG CANCER, WHAT WE REFER TO AS A DOSE-RESPONSE
10 RELATIONSHIP.

11 THE HIGHER THE DOSE, THE MORE DANGEROUS IT IS,
12 THE GREATER THE RISK OF GETTING THE VARIOUS DISEASES LINKED
13 TO SMOKING, IN THIS CASE LUNG CANCER.

14 MS. CHABER: THANK YOU.

15 DID YOU WANT TO STOP NOW?

16 THE COURT: OKAY. YES. THIS IS A GOOD TIME TO
17 STOP.

18 LET ME ACTUALLY, THOUGH -- BEFORE I LET THE JURY
19 GO, LET ME JUST CONFER WITH COUNSEL REAL BRIEFLY TO MAKE
20 SURE THAT WE'RE ALL ON THE SAME PAGE.

21 MS. CHABER: YOUR HONOR, COULD I JUST MAKE ONE
22 QUICK STOP HERE TO TALK TO THE WITNESS FOR ONE SECOND BEFORE
23 I COME BACK, BECAUSE I THINK YOU MIGHT ASK ME SOME
24 QUESTIONS.

25 THE COURT: ALL RIGHT.

26 (COURT AND COUNSEL CONFER OUTSIDE
27 THE PRESENCE OF THE JURY)

28 THE COURT: OKAY. BACK ON THE RECORD.

0867

1 EVERYBODY WANTS TO START TOMORROW AT 9:30, AND I
2 HAVE ANOTHER MATTER, BUT I'M CONFIDENT THAT I WILL BE DONE
3 WITH THAT OTHER MATTER BY 9:30.

4 SO THAT WILL BE OUR STARTING TIME. I WOULD ASK
5 YOU ALL TO PLEASE BE HERE PROMPTLY AT 9:30.

6 DON'T DISCUSS THIS CASE WITH ANYONE OVER THE
7 COURSE OF THIS EVENING. DON'T LET ANYONE DISCUSS IT WITH
8 YOU. DON'T FORM OR EXPRESS ANY OPINIONS ABOUT THE CASE.

9 HAVE A GOOD EVENING, AND WE'LL SEE YOU AT 9:30
10 SHARP TOMORROW.

11 (THE PROCEEDINGS ADJOURNED AT 4:25 P.M.)
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